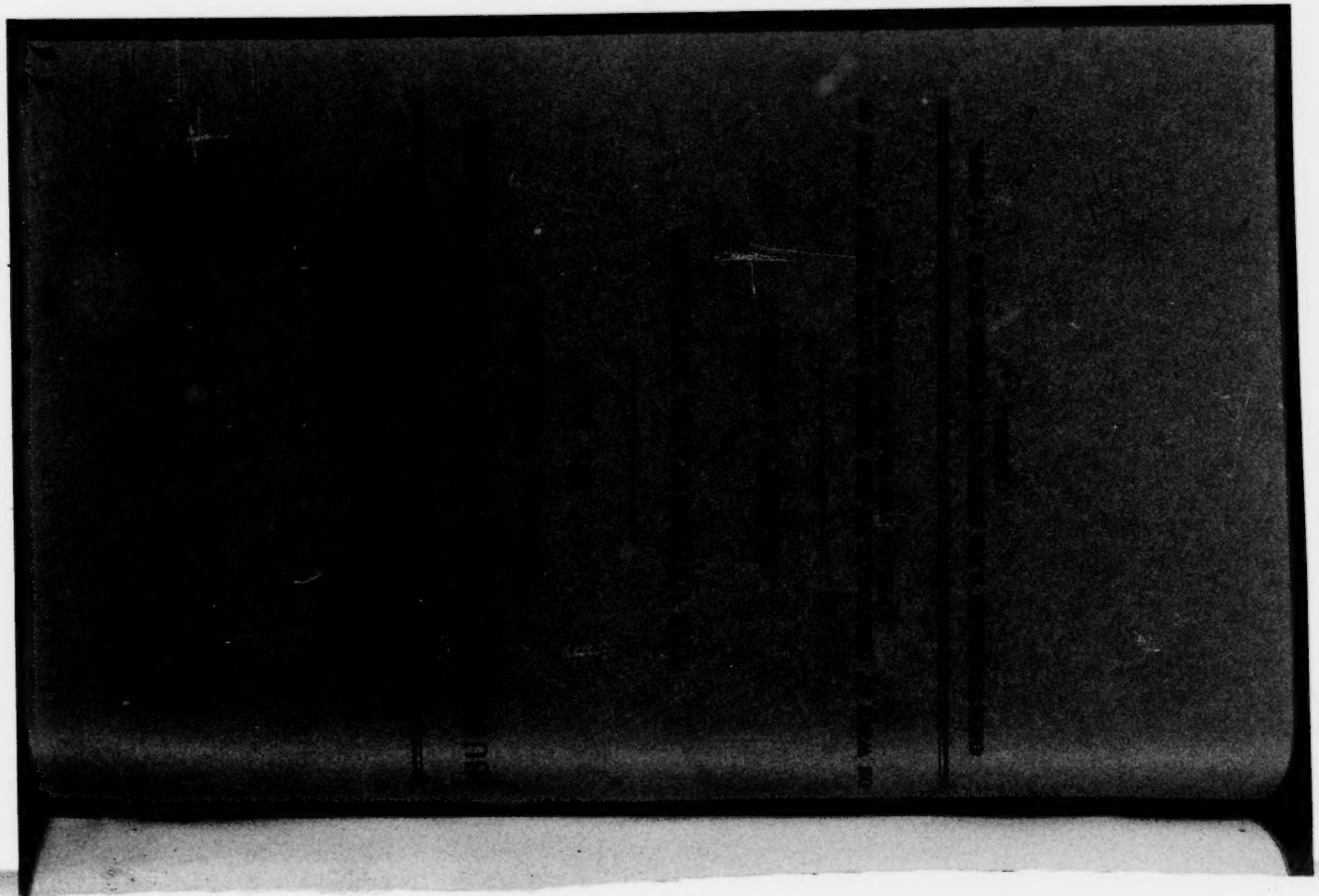

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 20.

THE UNITED STATES, APPELLANT,

vs.

RANLETT & STONE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

22331

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

IN THE MATTER OF RANLETT & STONE, Appellee,
vs.
THE BOARD OF UNITED STATES GENERAL Appraisers, Appellant.
} No. 12,313.

THOMAS J. SEMMES, Esq., for RANLETT & STONE, Appellee.
FERDINAND B. EARHART, Esq., U. S. District Attorney, for Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIFTH CIRCUIT AND EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION, TO THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FIFTH CIRCUIT, RETURNABLE WITHIN THIRTY (30) DAYS FROM THE TWENTY-EIGHTH (28TH) DAY OF DECEMBER, A. D. 1895, AT THE CITY OF NEW ORLEANS, LA.

TRANSCRIPT OF APPEAL.

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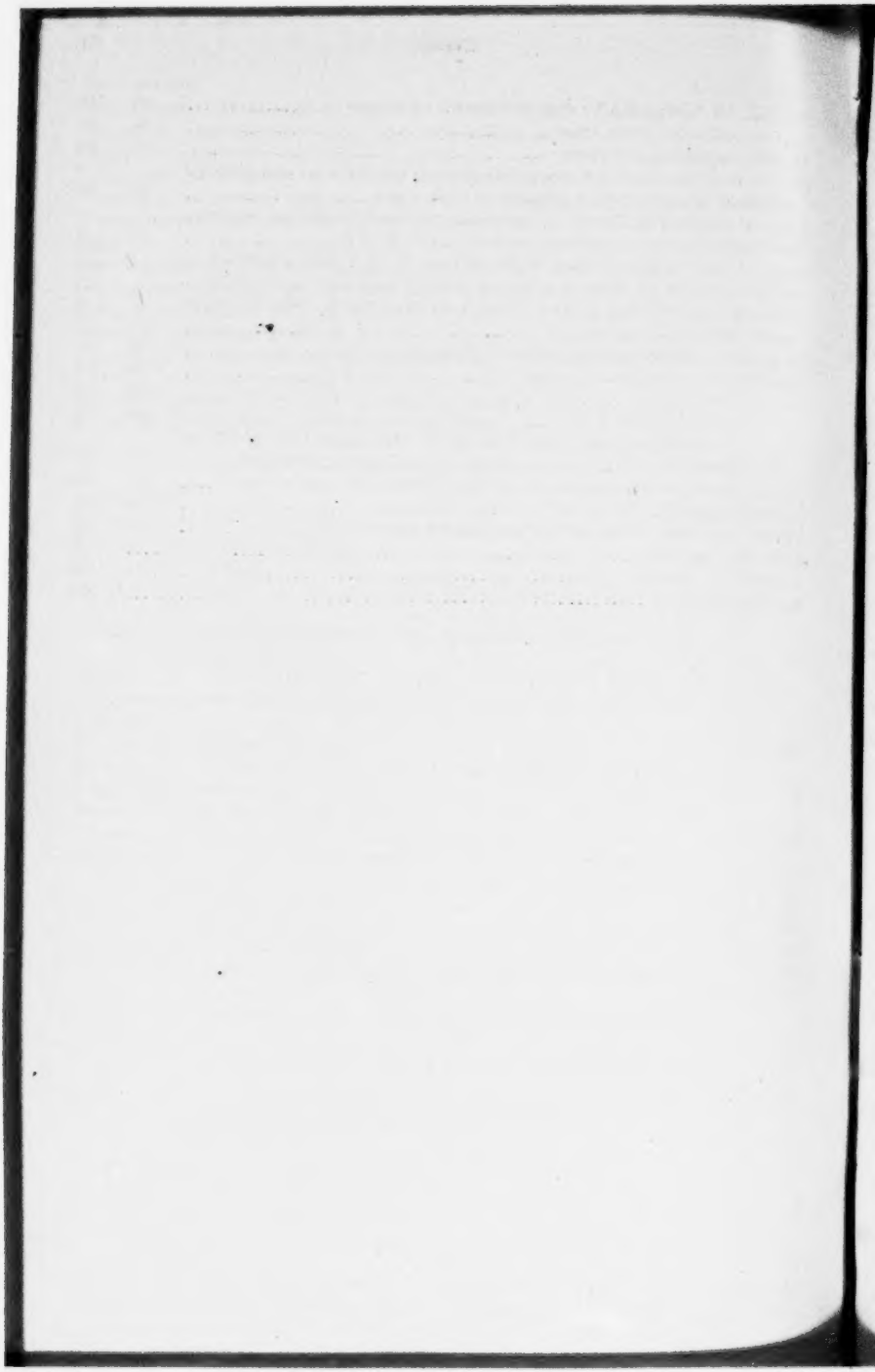

Application for Revision of Decision of the Board Under Act June 10, 1890, Ch. 407, Section 15.

Filed June 1, 1894.

United States Circuit Court, Eastern Dist. of Louisiana.

IN RE RANLETT & STONE,
vs.
U. S. BOARD OF GENERAL APPRAISERS.

To the Honorable the Circuit Court of the United States of the Eastern District of Louisiana, sitting in New Orleans:

The petition and application of Albert S. Ranlett and Joseph W. Stone, merchants and doing business in New Orleans under the firm name of Ranlett & Stone respectfully represents that in the year 1893 and in January, 1894, they purchased abroad and imported as owners into the port of New Orleans from Liverpool a large quantity of Grain Bags made of Jute and commonly known as Cental Bags of American manufacture shipped from the United States filled with the products thereof, and entitled to free entry on their return to this country; and in the contracts of purchase made by your petitioners with the vendors they guaranteed that said bags were entitled to free entry into the ports of the United States.

The said importations were as follows:

By the | ss | "Engineer," 600 bales containing 600,000 bags entered on the 14th of August, 1893, and free entry was made of this cargo No. 5878 dated September 1st, 1893, and afterwards in consequence of a controversy with the Collector of the Port of New Orleans arising as to the right of free entry, an Impost entry was made by the authority of the Secretary of the Treasury No. 6675 on October 10th, 1893, and duties were paid under protest; this entry liquidated on 15th December, 1893, and the protest or written notice of objections to the decision of the Collector of this port as required by Section 14 of the Act of Congress approved June 10th, 1890, Chapter No. 407, was filed with the Collector on December 23d, 1893, a copy of which is hereto annexed as part hereof.

A similar course was pursued as to 650 bales containing 650,000 bags imported by the | ss | "Legislator" entered September 9th, 1893. The Free Entry No. 6093 was dated September 30th, 1893, and duties were paid under protest and the entry liquidated December 21st, 1893, and the protest or written notice of objections was filed with the collector on December 30th, 1893, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 325 bales containing 325,000 bags by the | ss | "Vesta" entered October 9th, 1893, and Free Entry No. 6682 is dated October 10th, 1893, and Impost Entry No. 6959 is dated 31st October, 1893, and the duties were paid under protest and the entry was liquidated December 22nd, 1893, and the protest or written notice of objection was filed with the collector December 30th, 1893, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 300 bales containing 300,000 bags by the | ss | "Traveller" entered December 26th, 1893, and Free Entry No. 8168 is dated December 28th, 1893, but the collector of the port of New Orleans claimed that said bags were not entitled to free entry, and thereupon, on January 6th, 1894, the entry was liquidated and duties paid under protest, and the protest or written notice of objections was filed with the Collector on 15th January, 1894, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 100 bales containing 100,000 bags per | ss | "Pallas" entered January 4th, 1894, the Free Entry No. 103 is dated January 5th, 1894. But, the Collector of the Port of New Orleans claimed that said bags were subject to duty, and the entry was liquidated and duties paid under protest on January 19th, 1894, and the protest or written notice of objections was filed with the Collector, January 27th, 1894, a copy of which is hereto annexed as part hereof.

A similar course pursued in regard to the importation of 100 bales containing 100,000 bags by the | ss | "Engineer" entered January 15th, 1894, and Free Entry No. 339 is dated January 17th, 1894. But, the Collector of the Port of New Orleans claimed that the said bags were subject to duty and the duties were paid under protest and the entry liquidated 25th January, 1894, and the protest or written notice of objection was filed with the Collector January 30th, 1894, a copy of which is hereto annexed as part hereof.

A similar course was pursued in regard to the importation of 850 bales containing 850,000 bags by the | ss | "Assaye" entered November 8th, 1893. In this case the free entry was refused by the Collector of the Port of New Orleans and under the authority of the Secretary of the Treasury an Impost Entry No. 7262 was made on November 11th, 1893, and the duties were paid under protest and the entry liquidated December 27th, 1893, and the protest or written notice of objections was filed with the Collector January 4th, 1894, a copy of which is hereto annexed as part hereof.

Your petitioners aver that no proper or legal examination was made at the Port of New Orleans of the bags imported by the | ss | s "Engineer," "Legislator," "Vesta," "Assaye," or "Traveller." The part of the bags taken from each shipment and ordered to the Appraisers' Store and the part of the bags opened by the Appraiser for examination is stated in a schedule hereto annexed as part hereof, marked "A."

Your petitioners aver that the various protests or written notices of objections hereinbefore mentioned were served on Theo. S. Wilkinson, Collector of the Port of New Orleans on the dates that they respectively bear date, and within ten days after the respective dates of the liquidations hereinbefore mentioned.

Your petitioners represent that Theo. S. Wilkinson, the Collector of the Port of New Orleans, having decided that all the bags aforesaid were subject to duty and your petitioners having paid duties under protests as aforesaid and having filed with the Collector of the Port of New Orleans as required by Section 14 of the Act of Congress approved 10th June, 1890, Chapter No. 407 within the time prescribed by law, the written objections aforesaid to the decision of the said Collector, they took an

appeal from said decision to the Board of General Appraisers at New York, which Board sent one of their members to New Orleans to take testimony as to the facts of the case involved in said appeal. Said testimony was taken in the City of New Orleans on the 27th March, 1894, a copy of which is hereto annexed as part hereof. And thereupon, your petitioners transmitted to the General Board of Appraisers at New York a communication addressed to George C. Tichenor, the President of the said Board dated April 9th, 1894, which set forth the grounds upon which they rested their appeal, a copy of which is hereto annexed as part hereof. And, your petitioners aver that upon said grounds so set forth they are entitled to a Free Entry of said bags.

Your petitioners aver that the said Board of General Appraisers at New York, on 21st May, 1894, decided adversely to the appeal of your petitioners and sustained the decision of the Collector of the port of New Orleans.

Wherefore, your petitioners file this their application to this court, pursuant to the provisions of Section 15 of the Act of Congress approved June 10th, 1890, Chapter 407, for the purpose of having this court review the decision aforesaid of the Board of General Appraisers and reverse the same, and order the Collector of the Port of New Orleans to reliquidate said entries, and class said bags imported as aforesaid as entitled to entry free of duty, for the reasons and on the grounds aforesaid set forth in said protests or written notices of objections, and to order the Collector of the Port of New Orleans to refund all duties aforesaid heretofore paid under protests by your petitioners on the aforesaid importations of bags, with all expenses incurred by your petitioners, and for that purpose pray that a copy of this application be served on Theo. S. Wilkinson, Collector of the Port of New Orleans, as required by Section 15th of the said Act of 1890, and also that the court make an order directing the said Board of General Appraisers to return to this court the record and the evidence taken before them as to the matter involved in this application, together with a certified statement of the facts in the case and their decision thereon. And after due consideration of the law and the facts that this court will reverse said decision of the Board of General Appraisers and grant the relief herein prayed for.

(Signed) THOS. J. SEMMES,
Att'y for Pet'rs.

(Signed) RANLETT & STONE.

Order.

Let this application be filed and a copy thereof be served on Theodore S. Wilkinson, collector of the port of New Orleans, pursuant to Section 407 of the act of Congress, approved June 10, 1890. And it is ordered by the court that the Board of United States General Appraisers do return to this court the record and the evidence taken before them as to the matter involved in this application, entitled In re Ranlett & Stone vs. United States Board of General Appraisers, together with a certified statement of facts in the case and their decision thereon.

New Orleans, June 1, 1894.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Marshal's Return.

Received by U. S. Marshal, New Orleans, La., June 1, 1894, and on the same day I served copy hereof on Hon. Theo. S. Wilkinson, collector of port of New Orleans, by handing same to him in person at his office in the Custom House.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By T. I. GALBRETH, *Dy.*

And on the 10th day of July, 1894, I served a true copy of Application of Ranlett & Stone and Document annexed and order on Hon. Theo. S. Wilkinson, Collector of Port of New Orleans by leaving the same in the hands of Calhoun Fluker, Special Deputy Collector of New Orleans, who informed me that the Hon. Theo. S. Wilkinson, Collector, was absent from the City of New Orleans at the time of said service.

(Signed) J. V. GUILLOTTE,
U. S. Marshal.
By J. E. BOEHLER,
Dy. U. S. Marshal.

Exhibit marked Schedule A annexed to Petition.

Filed June 1, 1894.

Memorandum of number of bales of Central Bags ordered to the appraiser's store of the following shipments and number of bales opened:

		Ordered to Appraiser's Store	Opened by Appraisers	
Engineer	600 bales	70 = 11½% full	18 =	3 %
Legislator	650 "	43 = 6½% -o-	19 = barely	3 %
Vesta	325 "	38 = 11½% -o-	13 =	4 %
Assaye	850 "	85 = 10 % -o-	16 = barely	2 %
Traveller	300 "	21 = 7 %	14 = rather over	4½%
Pallas	100 "	100 = 100 %	10 =	10 %
Engineer	100 "	100 = 100 %	10 =	10 %

Copy of Letter to Collector, October 10, 1893, and of Protest Dec. 23, 1893.

Filed with petition June 1, 1894.

Slip attached to copy of letter and protest:

(Written in red ink)—600 bales = 600,000 bags.
(Written in black ink)
"Engineer" | ss | entered August 14, 1893.
Free entry No. 5878 dated September 1, 1893.
Impost entry 6675 " October 10, 1893.
Entry liquidated December 15, 1893.
Protest filed December 23, 1893.

OCTOBER 10, 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans.

DEAR SIR—In reference to our impost entry of this date for K.

101—400	300 bales,
401—500	100 "
726—925	200 "

600 bales, returned empty wheat bags, per S. S. "Engineer" entered Aug. 14, 1893, for which free entry was made September 1, 1893, we respectfully request that it be placed on record, that said impost entry is made by authority of the Secretary of the Treasury as per his telegram of the 28th ultimo, in order to enable us to obtain possession of such portion of the shipment, as is not required by the appraisers for examination, and is made without prejudice to the aforesaid free entry, or to the return to us of the duties deposited should the goods not *not* appraised as of foreign manufacture, or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours respectfully,
(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, *December 23d, 1893.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importations of returned empty wheat bags per Engineer ss entered August 14th, 1893. Impost entry No. 6675 dated October 10th, 1893, to which is attached free entry 5878 dated Sept. 1st, 1893, liquidated December 15th, 1893, marked:

United States,

K	101–400	300 bales,
	401–500	100 "
	726–925	200 "

600 bales, each containing 1,000 bags, equals 600,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American manufacture, exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the act of February 8th, 1875, is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags other than of American manufacture described by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags, is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Letter to Collector Sept. 30, 1893, and of Protest Dec. 30, 1893.

Filed June 1, 1894.

Slip attached to letter and protest.

(Written in red ink)—
600 bales = 650,000 bags.
(Written in black ink.)
"Legislator" | ss | entered September 17th, 1893.
Free entry No. 6093 dated September 12th, 1893.
Impost entry 6400 dated September 30th, 1893.
Entry liquidated December 21st, 1893.
Protest filed December 30th, 1893.

SEPTEMBER 30th, 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans.

DEAR SIR—In reference to our impost entry of this date for

K		926–1225	300 bales,
		1226–1350	125 "
		1351–1450	100 "
H	c	1–125	125 "

650 bales returned empty wheat bags per | ss | "Legislator" entered September 7th, 1893, for which free entry was made September 12th, 1893, we respectfully request that it be placed on record that said impost entry is made by authority of the Secretary of the Treasury as per his telegram of the 28th instant, in order to enable us to obtain possession of such portion of the shipment as is not required by the appraisers for examination, and is made without prejudice to the aforesaid free entry, or to the return to us of the duties deposited should the goods *not* be appraised as of foreign manufacture, or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours, respectfully,
(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, *December 30th, 1893.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importations of returned empty American grain bags per *Legislator* | ss | entered September 7th, 1893. Impost entry No. 6400 dated September 30th, 1893, to which is attached free entry No. 6093, dated September 12th, 1893, liquidated December 21st, 1893, marked:

United States,

H c	1- 125	125 bales.
	926-1225	300 "
	1226-1350	125 "
K	1351-1450	100 "
		650 bales, each containing,

1,000 bags, equals, 650,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the act of October 1st, 1890, as bags of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875, is still in full force and effect and has not been repealed by any Statute of the United States, and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Letter to Collector Wilkinson, Octo. 31, 1893 and of Protest Dec. 30, 1893.

Filed June 1st, 1894, with Petition.

Slip attached to copy of Letter and Protest:

(Written in red ink)—
325 Bales=325,000 Bags.
(Written in black ink)
"Vesta" | ss | entered October 9th, 1893.
Free entry No. 6682 dated October 10th, 1893.
Impost entry 6959 dated October 31st, 1893.
Entry liquidated December 22nd, 1893.
Protest filed December 30th, 1893.

OCTO. 31st; 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans, La.

DEAR SIR: In reference to our impost entry of this date for

K.	1451–1575	125 bales,
	1576–1775	200 "
		325 bales,

returned empty wheat bags per "Vesta" as entered October 9th, 1893, for which free entry was made October, 1893, we respectfully request that it be placed on record that said impost entry was made by authority of the Secretary of the Treasury as per his telegram of the 30th instant, in order to enable us to obtain possession of such portion of the shipment as is not required by the appraisers for examination and is made without prejudice to the aforesaid free entry or to the return to us of the duties deposited should the goods *not* be appraised as of foreign manufacture or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours respectfully,
(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, LA., *December 30th, 1893.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR: We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of empty returned grain bags per Vesta ss entered October 9th, 1893. Impost entry No. 6959 dated October 31st, 1893, to which is attached free entry No. 6682 dated October 10th, 1893, liquidated December 22nd, 1893, marked:

United States,

K	1451–1575	125 bales,
	1576–1775	200 "
		325 bales each containing, 1,000

bags, equals 325,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags

of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8th, 1875, which provides that bags other than of American Manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875, is still in full force and effect and has not been repealed by any Statute of the United States and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound in the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Letter to Collector, Nov. 8, 1893, and of Protest, Jan. 4, 1894.

Filed with petition June 1, 1894.

Slip attached to copy of letter and protest:

(Written in red ink)—
850 bales=850,000 bags.
(Written in black ink)
"Assaye" | ss | . entered November 8, 1893
Impost entry No. 7262 dated November 11, 1893.
Entry liquidated December 27, 1893.
Protest filed January 4, 1894.
(Written in red ink)
Free entry refused.

NOVEMBER 8, 1893.

Hon. T. S. WILKINSON,
Collector of Customs, New Orleans, La.

DEAR SIR—In reference to our impost entry of this date for

K.	1776-2175	400
	2176-2525	350
	2526-2625	100
		850

Bales returned empty wheat bags per "Assaye" | ss | entered November 8th, 1893, for which free entry was made November 8th, 1893. We respectfully request that it be placed on record that said impost entry is

made by authority of the Secretary of the Treasury, as per his telegram of November 3rd, 1893, in order to enable us to obtain possession of such portion of the shipment as is not required by the appraisers for examination and is made without prejudice to the aforesaid free entry or of the return to us of the duties deposited should the goods not be appraised as of foreign manufacture or to our right to protest and appeal should the goods not be appraised as of American manufacture.

Yours faithfully,

(Signed) RANLETT & STONE.

(Copy.)

NEW ORLEANS, *January 4th, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned American bags per "Assaye" | ss | entered November 8th, 1893, impost entry No. 7262, dated November 11th, 1893, liquidated December 27th, 1893, marked:

United States,

K	1776-2175	400 bales,
	2176-2525	350 "
	2526-2625	100 "

850 bales, each containing 1,000 bags, 850,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7 of the Act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875, is still in full force and effect and has not been repealed by any Statute of the United States, and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers as provided by sections 2614 and 2901 of the Revised Statutes. That 85 bales of the shipment were ordered to the Appraisers' Stores, to be opened, examined and appraised, but 16 bales only were opened or examined.

We claim that the assessment of two (2) cents per pound on the entire contents of the packages on the ground that they were found in the opinion of the appraiser to contain a mixture of foreign with American bags is incorrect, and that the bags, being all of one value, whether of

foreign or American make, do not come under the provisions of section 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,

(Signed) RANLETT & STONE.

Copy of Protest dated Jan. 15, 1894.

Filed with petition June 1, 1894.

Slip attached to protest.

(Written in red ink.)
300 bales = 300,000 bags.
(Written in black ink.)
"Traveller" | ss | entered December 26th, 1893.
Free entry No. 8168 dated December 28th, 1893.
Entry liquidated January 6th, 1894.
Protest filed January 15th, 1894.

NEW ORLEANS, *January 15, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.:

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of empty returned grain bags per Traveller | ss | entered December 26th, 1893, free entry No. 8168, dated December 28th, 1893, liquidated January 6th, 1894, marked:

United States.

2626–2725	100 bales,
2726–2825	100 "
2826–2925	100 "

300 bales, each containing, 1,000 bags, equal 300,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American Manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7. of the Act of February 8th, 1875, which provides that bags other than of American Manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875 is still in full force and effect and has not been repealed by any Statute of the United States, and that the regulations for the free entry of bags other than of American Manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on

the entire contents of the packages on the ground that they were found, in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,
(Signed) RANLETT & STONE.

Copy of Protest dated Jany. 27, 1894,

Filed with Petition June 1, 1894.

Slip attached to Copy of Protest.

(Written in red ink)—
100 Bales = 100,000 Bags.
(Written in black ink)
Pallas | ss | entered January 4th, 1894
Free entry No. 103 dated January 5th, 1894
Entry liquidated January 19th, 1894.
Protest filed January 27, 1894.

NEW ORLEANS, *January 27, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned empty wheat bags per Pallas | ss | entered January 4th, 1894, Free entry No. 103
January 5th, 1894, liquidated January 19th, 1894, marked:
United States,

2926–3025 100 Bales, each containing 1,000 bags, equals 100,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisions of paragraph 493 of the free list of the Act of October 1, 1890 as bags of American Manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8, 1875 is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags, other than of American manufacture prescribed by the Secretary of the Treasury are still in force, and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the

entire contents of the packages on the ground that they were found in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,

(Signed) RANLETT & STONE.

Copy of Protest Dated Jany. 30, 1894.

Filed June 1, 1894.

Slip attached to Copy of Protest.

(Written in red ink.)
100 Bales = 100,000 Bags.
(Written in black ink.)
Engineer | ss | entered January 15th, 1894.
Free entry No. 339 dated January 17th, 1894.
Entry liquidated January 25th, 1894.
Protest filed January 30th, 1894.

NEW ORLEANS, *January 30th, 1894.*

Hon. THEO. S. WILKINSON,
Collector of Customs, New Orleans, La.

SIR—We hereby protest against your decision, liquidation and rate and amount of duties assessed by you at two (2) cents per pound on our importation of returned empty wheat bags per "Engineer | ss | entered January 15th, 1894, Free entry No. 339 dated January 17th, 1894, liquidated January 25th, 1894, marked:

United States,

3026–3125 100 Bales, each containing 1,000 bags equals 100,000 bags, on the following grounds:

We claim that said bags are entitled to free entry under the provisons of paragraph 493 of the free list of the Act of October 1st, 1890, as bags of American Manufacture exported filled with American products and not dutiable as assessed by you.

We claim that if not free of duty as above set forth the bags are entitled to free entry under the provisions of Sec. 7, of the Act of February 8th, 1875, which provides that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty and that same are not dutiable as assessed.

We claim that the Act of February 8th, 1875 is still in full force and effect and has not been repealed by any statute of the United States, and that the regulations for the free entry of bags other than of American manufacture prescribed by the Secretary of the Treasury are still in force and that we have complied with said regulations in all respects.

We claim that the goods were not fairly and faithfully examined by the appraisers, and that the assessment of two (2) cents per pound on the

entire contents of the packages on the ground that they were, found in the opinion of the appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of one value whether of foreign or American make, do not come under the provisions of Sec. 2910 of the Revised Statutes.

We claim refund of the duties illegally exacted.

Very respectfully,

(Signed) RANLETT & STONE.

Communication of Ranlett & Stone to Geo. C. Tichenor, Pres't of the Board April 9, 1894, stating grounds for reversing the decision of the Collector.

Filed June 1, 1894, with petition.

NEW ORLEANS, *April 9th, 1894.*

GEO. C. TICHENOR, Esq.,
President, Board U. S. General Appraisers, New York, N. Y.

DEAR SIR—Confirming our protests against the decision of the Collector of this Port in liquidating and assessing a duty of two (2) cents per pound on our importations of returned empty grain bags, viz:

600	bales, per	"Engineer"	Entered	Aug. 14, 1893.
650	"	"Legislator"	"	Sept. 7, 1893.
325	"	"Vesta"	"	Oct. 19, 1893.
850	"	"Assaye"	"	Nov. 8, 1893.
300	"	"Traveller"	"	Dec. 26, 1893.
100	"	"Pallas"	"	Jan. 4, 1894.
100	"	"Engineer"	"	Jan. 15, 1894.

2925 bales, of 1000 each, equals 2,925,000 bags.

We beg to submit the following facts in support of our claim for a reversal of said decision and a reliquidation of the entries,

We claim that these bags were of American manufacture, shipped from this country, filled with the products thereof, as shown by papers attached to entries, and consequently entitled to free entry on their return, and we have complied with the law and Treasury regulations as to the production of the sworn statements of the English shippers as to the origin of the goods and certificated of the Pacific coast Customs Authorities as to their exportation therefrom filled with wheat, which prima facie evidence of their being of the manufacture of this country has not been disproved.

We claim that the experience and knowledge of the United States Examiner at this Port, as is shown by the evidence was not such as to enable him to determine as to the origin of the goods; that his testimony at the hearing had here was both too inadequate and contradictory, and the samples retained by him, 87, one each out of 87 bales, representing shipments aggregating 2,925 bales, were neither sufficient in number nor so fairly drawn as to faithfully represent the goods, and form a just basis for the action of the Collector; and further, that the evidence and opinion of Mr. Naeff, called in as expert by the Appraiser of this Port of behalf of the Government, were diametrically opposite to those of the Examiner.

We claim that the evidence shows that the Examiner's estimate of the percentages of such bags as he considered to be Foreign and such as he considered to be domestic, were not based on facts such as could be derived only from an actual and careful count of the packaged bag by bag, but was simply a rough estimate.

We claim that the evidence shows that the goods were not lawfully examined as provided under Section 2901 of the Revised Statutes which states that one package of every ten shall be *opened*, *examined* and *appraised*, and that failure to comply with said statute invalidated the appraisement, and in support of this claim cite the decision of the U. S. Supreme Court in the case of Converse vs. Burgess, 18th Howard, p. 413.

We submit in evidence all the entries and the invoices, certificates and papers attached thereto, or in the possession of the Customs Authorities in reference to our claim.

We respectfully request that our protests may be acted upon and decision rendered as promptly as possible consistent with a careful and just consideration of the facts.

Very respectfully,
(Signed) RANLETT & STONE.

Examination of Witnesses before General Appraiser F. B. Wilkinson at the Customhouse in New Orleans on 27 March, 1894,

Was filed as part of Petition, June 1, 1894, and now to be considered an exhibit in the cause, but not to constitute a part of the petition, as per Order to Amend Petition and to strike out, etc. See page 31 of this Transcript.

Answer.

Filed June 13, 1894.

United States Circuit Court, Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Now comes the United States by F. B. Earhart, United States Attorney for said United States, and for answer unto the petition filed in this cause to review the decision of the General Board of Appraisers therein mentioned, denies that there is error in said decision as is alleged, and avers that the same is in all respects valid and in conformity with the law in such cases made and provided.

Wherefore, respondent prays that said petition may be dismissed and that said decision be affirmed, and that respondent may have his cost.

(Signed) F. B. EARHART,
United States Attorney.

Motion to Rescind Order and Dismiss Application for Review.

Filed July 2, 1894.

United States Circuit Court.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Now comes F. B. Earhart, United States attorney, and herein suggesting that on June 1st, 1894, this honorable court issued an order to the United States Board of General Appraisers to make "return to this honorable court of the record and the evidence taken before them as to the matter involved in the application for review herein together with a certified statement of the facts in the case and their decision thereon"—and said attorney appearing herein on behalf of said Board of General Appraisers and the collector of the port of New Orleans reserving all rights of the United States herein—moves the court that the said order be rescinded and said application for review be dismissed for this, to-wit:

That said petition and application for review as herein prayed for by the said Ranlett & Stone, Importers, does not contain a concise statement of the errors of law and facts complained of in the decision of the said Board of General Appraisers of the United States, as required by law in such cases made and provided. That a copy of this motion be served on the said importers, and set down for hearing.

Hearing and Submission of Motion to Rescind, etc.

Extract from the Minutes, April Term, 1894.

NEW ORLEANS, *Monday, July 2, 1894.*

Court met, pursuant to adjournment.

Present: Hon. Charles Parlange, District Judge.

IN RE RANLETT & STONE
vs.
BOARD U. S. GENERAL APPRAISERS. } No. 12,313.

This cause came on to be heard this day to be heard upon the motion presented by the United States to dismiss the application of the petitioners herein for a review of the decision of the Board of U. S. General Appraisers.

F. B. Earhart, U. S. Attorney, appearing for movers.

T. J. Semmes for petitioners herein, Ranlett & Stone, and was argued and submitted—when the court took time to advise.

Order.

Entered and filed July 3, 1894.

IN RE RANLETT & STONE
vs.
BOARD U. S. GENERAL APPRAISERS. } No. 12,313.

On the hearing of the motion to dismiss the application of the petitioners Ranlett & Stone, it is adjudged that said motion be rejected

inasmuch as the documents annexed to the petition as part thereof constitute a part of said petition, and the said documents set forth in a concise manner the errors of law and of fact complained of.

It is further ordered that a copy of the petition and of all the documents thereto annexed as part thereof except the document containing the testimony referred to in the petition which by amendment this day allowed has ceased to be a part of the petition be served on T. S. Wilkinson the collector of this port.

It is further ordered that the Board of Appraisers do forthwith return to this court the record and the evidence taken by them in this case together with a certified statement of the facts involved in the case and their decisions thereon as required by Section 15 of the Act of Congress, approved June 10, 1890, Ch. 417.

New Orleans, July 3d, 1894.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Motion of Applicants to Amend their Petition and to strike out Certain Words in reference to making the testimony annexed to the petition a part thereof.

Entered and Filed July 3, 1894.

United States Circuit Court, Eastern Dist. of La.

IN RE RANLETT & STONE
vs.
BOARD OF GEN'L APPRAISERS } No. 12,313.

On motion of Thos. J. Semmes of counsel for Ranlett & Stone the applicants,

It is ordered that the following sentences in the petition filed by said applicants, to-wit:

"Said testimony was taken in the city of New Orleans on 27 March, 1894, a copy of which is hereto annexed as part hereof" be amended by striking out the words "as part hereof" so as to have the said testimony an exhibit in the cause, but not to constitute a part of the petition.

Bill of Exceptions No. 1.

Filed July 3, 1894.

United States Circuit Court, Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Be it remembered that on the 2nd day of July, A. D. 1894, before said court the motion to rescind the order granted herein on the application of said "Ranlett and Stone," importers, as well as to dismiss their

application for review herein, came on for hearing; present, F. B. Earhart, United States Attorney for the General Board of Appraisers and the Collector of the Port of Orleans, and Thomas J. Semmes, Esq., for said importers, and after hearing argument of Counsel the Court took the said motion under advisement, and on the 3rd day of July, A. D. 1894, overruled said motion hereto annexed by an order, both of which motion and order are made part hereof as if the same were fully recited herein. Whereupon said F. B. Earhart, United States Attorney, excepted to said ruling and reserves this his bill of exceptions, and now presents the same to the court for signature.

New Orleans, July 3d, 1894.

In open court.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Return of the Board of U. S. General Appraisers.

Filed August 10th, 1894.

In the Circuit Court of the United States for the Eastern District of Louisiana.

(Signed)
H. T. WALDEN.
[Seal.]
Acting Chief Clerk Board of General Appraisers.

H. T. W.

In the matter of the application of Ranlett & Stone for a review of the decision of U. S. General Appraisers as to the rate and amount of duty on certain merchandise imported by them in the vessels and at the dates hereinafter named.

Suit No. 1225.

Return of the Board of United States General Appraisers to the order of Hon. Charles Parlange, District Court Judge.

Dated New York, August 7th, 1894.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that letters (hereto annexed and marked Exhibits "A" and "B") were received from the Collector of Customs at New Orleans, submitting under the provisions of Section 14 of the Act of June 10, 1890, the protests (marked Exhibits "C," "D," "E" and "F") described as follows:

Coll's No.	Board No.	Protestant.	Vessel.	Dt. Entry.
476	21861-B,	Ranlett & Stone,	Engineer,	Oct. 10, '93
479	21862-B,		Vesta,	Oct. 31, '93
480	21863-B,		Legislator,	Oct. 3, '93
481	21965-B,		Assaye,	Nov. 11, '93

They state that a letter (copy of which is hereto annexed and marked Exhibit "G") was received from the Collector of Customs at New Orleans, submitting, under the provisions of Section 14 of the Act of

June 10, 1890, the protests (marked Exhibits "H," "I" and "J"), described as follows:

Coll's No.	Board No.	Protestant.	Vessel.	Dt. Entry.
485	22185–B,	Ranlett & Stone,	Traveller,	Dec. 28, '93
489	22186–B,		Pallas,	Jan. 5, '94
490	22187–B,		Engineer,	Jan. 17, '94

That accompanying the letters of the Collector aforesaid were reports from the U. S. Appraiser at New Orleans, describing the merchandise subject of said protests, which reports are hereto annexed and marked Exhibits "K," "L," "M," "N," "O" & "P."

There is returned herewith the testimony taken by the board relating to the protests covered by the decision herein. Said testimony is marked Exhibit "Q."

That on the 21st day of May, 1894, the Board of General Appraisers rendered its decision in the matter of said protests 21861–B, &c., a copy of which decision is hereto annexed and marked Exhibit "R."

Exhibit "A."

J. C.

PORT OF NEW ORLEANS, *January 6th, 1894.*

Hon. GEORGE C. TICHENOR,
President of the General Board of U. S. General Appraisers,
123 Bleecker Street, New York:

SIR: I have the honor to transmit herewith protests of Ranlett & Stone against the assessment of duty at the rate of two cents per pound on certain empty grain bags imported as follows:

No. of Protest.	Date of Entry.	Vessel.
21861 B		
476	October 10, 1893.	"Engineer."
21862		
479	" 31, "	"Vesta."
21863		
480	" 2, "	"Legislator."

It appears that the merchandise consists of the ordinary empty jute grain bag, claimed to have been exported from the United States filled with grain and returned empty, but that the Appraiser on examination reports that "after a careful examination of this importation of bags we are of opinion that foreign made bags are contained therein," and that duty was, therefore, assessed on said bags under paragraph 365, N. T., at the rate of 2 cents per pound.

It is contended by the protestants that the bags are entitled to free entry under paragraph 493, N. T., as bags of American manufacture exported filled with American products and returned empty; that if not free under the paragraph cited, to be entitled to free entry under the provisions of section 7 of the Act of February 8, 1875, as bags of other than American manufacture in which grain shall have been actually exported from the United States, and which are subsequently returned empty. It is further claimed that the act of February 8, 1875, is still

in full force and effect, not having been repealed by any statute of the United States, and that the regulations prescribed by the Treasury Department thereunder are still in force and have been complied with in all respects. It is also claimed that the goods were not fairly and faithfully examined by the appraiser, and that the assessment of duty on the entire contents of the packages on the ground of containing a mixture of foreign with American bags is incorrect, the goods being all of one value, whether foreign or American make, do not come under the provisions of section 2910 R. S.

In connection with the importations the protestants have produced the foreign consular certificates required by the regulations.

The protests, entries, invoices and appraiser's reports are enclosed.

Respectfully yours,

(Signed) THEO. S. WILKINSON,
Collector.

(Three sets enclosures.)

(Endorsed:) 37456 Po 21861 21863. Custom-House. Collector's Office, New Orleans, La. Jan. 6, 1894. Theo. S. Wilkinson, Collector. Empty grain bags, Subject to protests Ranlett & Stone against assessment duty at rate of 2c. per lb. on returns empty grain bags. 37456 Po. Received Jan. 10, 1894. Board U. S. Gen. App'rs., New York. No. of Enclosures, Three sets. 17 Enc. E. W.

Exhibit "C."—A copy—of which Exhibit "C" is the original—appears at page 9 of this Transcript; but the following figures, stamp and endorsement as contained in said original "Exhibit C," does not appear on the copy as set forth at said page 9, viz.:

21861. No. 476—Stamped: Custom-House, Received Dec. 23, 1893, New Orleans. Endorsed: No. 467. New Orleans, La., Dec. 23, 1893. Ranlett & Stone, 37456 Po. Protest against assessment duty at rate of two (2) cents per pound on returned empty wheat bags claimed to be free under par. 493, Act of Oct. 1, 1890, or Section 7, Act Feb. 8, 1875. Vessel, Engineer; character of entry, Consumption; date of entry, Oct. 10, 1893; entry liquidated, Dec. 15, 1893; protest filed Dec. 23, 1893; appeal filed ——.

Exhibit "D."—A copy—of which Exhibit D is the original—appears at page 14 of this transcript; but the following figures, stamp and endorsement as contained in said original "Exhibit D," does not appear on the copy as set forth at said page 14, viz.:

21862. No. 479. Stamped: Custom-House. Received Dec. 30, 1893, New Orleans. Endorsed: No. 479. New Orleans, La., Dec. 30, 1893. Ranlett & Stone. 37456 Po. Protest against assessment duty at rate of two (2) cents per pound on empty returned grain bags, claimed to be free under par. 493, Act Oct. 1, '90, or Sec. 7, Act Feb. 8, '75. Vessel, "Vesta;" character of entry, Consumption; date of entry, Oct 31, 1893; entry liquidated, Dec. 22, 1893; protest filed Dec. 30, 1893; appeal filed ——.

Exhibit "E."—A copy—of which Exhibit "E," is the original—appears at page 12 of this Transcript; but the following figures, stamp and endorsement as contained in said original Exhibit E, does not appear on the copy as set forth at said page 12, viz.: 21863. No. 480. Stamped: Custom-House. Received Dec. 30, 1893. New Orleans.

(Endorsed:) No. 480. New Orleans, La., Dec. 30, 1893. Ranlett & Stone. Protest against assessment duty at rate of two (2) cents per pound on returned empty grain bags, claimed to be free under par. 493, act Oct. 1, 1890, or Section 7, act of Feb. 8, 1875. 37456 Po. Vessel "Legislator;" character of entry, consumption; date of entry, Oct. 3, 1893; entry liquidated, Dec. 21, 1893; protest filed Dec. 30, 1893: appeal filed ——.

Exhibit "K."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 4, 1894.

Hon. T. S. WILKINSON, *Collector of Customs:*

SIR—Respectfully referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 6675, 21861 I have to report that this importation consisted of 600 bales cental bags Ex s-s Engineer from Liverpool, August 14, 1893, and were found upon examination by this office to contain bags of foreign manufacture.

This office returned them as dutiable at 2 cts. per lb. under Par. 365. See notation on invoice.

Respectfully,
(Signed) CHAS. F. ALBA,
21861 *Appraiser.*
(1 set enclosed return.)

Exhibit—"L."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 4, 1894.

Hon. T. S. WILKINSON, *Collector of Customs,*

SIR—Respectfully referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 6400 21863 I have to report that this importation consisted of 650 Bales Cental Bags Ex s-s Legislator from Liverpool, Sept. 7, 1893, and were found upon examination by this department to contain bags of Foreign Manufacture and were returned as dutiable at 2 cts. per lb. under Par. 365—see notation on invoice.

Enclosures are herewith returned.

Respectfully,
21863 (Signed) CHAS. F. ALBA,
(1 set enclosures returned) *Appraiser.*

Exhibit—"B"

OFFICE OF THE COLLECTOR OF CUSTOMS,
J. C *Port of New Orleans, January 18th, 1894.*

Hon. GEORGE C. TICHENOR,
President of the General Board of U. S. General Appraisers,
123 Bleecker Street, New York City.

SIR—I have the honor to submit a protest of Ranlett & Stone against the assessment of duty at the rate of 2 cents per pound on certain empty

jute grain bags imported per "Assaye" November 11, 1893, and entered for immediate consumption on arrival.

It appears that the merchandise consists of the ordinary jute grain bags, claimed to have been exported from the United States filled with grain and returned empty, but that the appraiser on examination reports that "after a careful examination of this importation of bags we are of opinion that foreign made bags are contained therein," and that duty was, therefore, assessed on the said bags under paragraph 365, N. T., at the rate of 2 cents per pound.

It is contended by the protestants that the bags are entitled to free entry under paragraph 493, N. T., as bags of American manufacture exported filled with American products and returned empty; that, if not free under the paragraph cited, they are entitled to free entry under the provisions of section 7 of the act of February 8, 1875, as bags of other than American manufacture in which grain shall have been actually exported from the United States, and which are subsequently returned empty. It is further claimed that the act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States, and that the regulations prescribed by the treasury department thereunder are still in force and have been complied with in all respects. It is also contended that the goods were not fairly and faithfully examined by the appraiser, and that the assessment of duty on the entire contents of the packages on the ground of containing a mixture of foreign with American bags is incorrect, the goods being all of one value, whether foreign or American, do not come under the provisions of section 2910, R. S.

In connection with the importations the protestants have produced the foreign consular certificates required by the regulations.

The appraiser reports with regard to the examination that the bags were subjected to a very thorough and critical inspection, and that a larger per cent. of the bales were opened than has heretofore been the practice, and that the regulations have been complied with in all respects in the examination and classification of the merchandise under consideration. The appraiser files with his report a statement to the same effect from the examiner of merchandise and the assistant appraiser who personally made the inspection of the bags.

The protest, invoices (3) and appraiser's report are enclosed.

Respectfully yours,

(Signed) CALHOUN FLUKER,
Sp. D'y Collector.

(Five enclosures.)

(Endorsed:) 37751 Po 21965—Custom-House, Collector's office, New Orleans, La., Jan. 18, 1894. Theo. S. Wilkinson, collector. Empty grain bags.—Subject: Protest Ranlett & Stone, assessment duty at 2c per lb. on empty jute bags. 37751 Po. Stamped: Received by Board of U. S. General Appraisers Jan. 22, 1894. No. of Inclosures, Five. E. & W.

Exhibit "F."

A copy—of which Exhibit "F" is the original—appears at page 17 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "F," does not appear on the copy as set forth at said page 17.

21965. No. 481. Stamped: Custom House, Received Jan. 5, 1894, New Orleans. Endorsed—No. 481. New Orleans, La., Jan. 4, 1894. Ranlett & Stone. Assessment duty at rate 2c per lb. on returned American grain bags claimed to be entitled to free entry. 37,751 Po. Vessel "Assaye;" Character of Entry Nov. 11, 1893; Entry Liquidated Dec. 27, 1894; Protest filed Jan. 5, 1894; Appeal filed ———

Exhibit "M."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 16, 1894.

Hon. T. S. WILKINSON, *Collector of Customs.*

SIR—Referring to the protest of Mess. Ranlett & Stone against the liquidation of Impost Entry No. 7262 for 850 Bales Cental Bags, and wherein this office is charged with not having fairly and faithfully examined the goods, I beg to say that this department has complied with the customs regulations in the examination of all merchandise and particularly so in the matter of Cental Bags, in support of which I file herein the report of Examiner Keeting to me, as part of my report. I further claim that these bags were properly returned by this office as dutiable at 2 cts. per lb. under par. 365.

I will state that Mr. Ranlett of the firm of Ranlett and Stone, informed me during the month of November last past, that he wanted a decision one way or the other, stating that the bags were sold to them free of duty and if found to be of foreign manufacture, they would hold the exporters for the difference. I have no doubt that the correspondence relative to the contract and purchase of these bags can be procured by the government, which would greatly aid the department in the solution of this bag question.

Very respectfully,
(Signed) CHAS. F. ALBA,
Appraiser.

(Enclosures returned.)

PORT OF NEW ORLEANS, LA., EXAMINER'S OFFICE,
January 13th, 1894.

Hon. CHAS. F. ALBA,
Appraiser of Merchandise:

SIR—In reference to the claim of Messrs. Ranlett and Stone, that certain importations of Cental bags consigned to them were not fairly examined by the appraiser at this port, I would respectfully state that every invoice of bags examined since you have been in charge of the Appraiser's Office, has been subjected to a very thorough and critical inspection, and a larger per cent. of the bales have been opened than has

heretofore been the custom. I rather anticipated complaint on the part of the importers, for having been compelled to cut the iron ties on so large a number of the bales in order to secure therefrom the proper samples to prove the classification of the merchandise to be correct. All importations of bags consigned to Messrs. Ranlett & Stone present about the same appearance, and from a careful study of the bag question, and from the most reliable information I have been able to obtain from others who claim to be expert judges in the matter, I am firmly of the opinion that a considerable proportion of all the Cental bags shipped to them at this port and examined by me, are unquestionably of *foreign manufacture.*

Very respectfully,
(Signed) CHAS. W. KEETING,
Examiner.

I hereby concur,
(Signed) E. P. PRUDHOMME,
Assistant Appraiser.

Exhibit "G."

(Copy.)

PORT OF NEW ORLEANS, *Feb. 16, 1894.*

HON. GEO. C. TICHENOR,
President of the General Board United States General Appraisers,
123 Bleecker Street, N. Y. City.

SIR—I have the honor to submit protests, as per schedule below, against the assessment of duty at the rate of 2 cents per pound on certain returned cental bags imported at this port by the vessels and at the times named.

The merchandise was reported by the Appraiser as "Empty jute grain bags, 2 cents per pound (365). After a careful examination of this importation of bags we are of opinion that foreign made bags are contained therein," and duty was therefore assessed thereon at 2 cents per pound under paragraph 365, N. T.

The protestants claim in general:

1st: that the bags are entitled to free entry under paragraph 493 of the tariff act as bags of American manufacture, exported filled with American products; and

2d: that if not free under said paragraph of the present Act, they are entitled to free entry under section 7 of the Act of February 8, 1875, providing that bags other than of American manufacture in which grain shall have been actually exported from the United States, may be returned empty to the United States under regulations of the Secretary of the Treasury, it being contended in connection with this claim that the Act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States, and that the regulations of the Secretary of the Treasury thereunder have been complied with.

It is also claimed that the goods were not fairly and faithfully examined by the Appraiser, and that the assessment of duty at the rate of 2 cents per pound upon the entire contents of the packages on the ground that they were found, in the opinion of the Appraiser, to contain a mixture of foreign with American bags is incorrect, and the goods being all of

one value whether of foreign or American make do not come under the provisions of section 2910 of the Revised Statutes. The protests, invoices and Appraiser's reports are enclosed herewith.

Respectfully yours,
(Sd.) CALHOUN FLUKER,
Sp. Dy. Collector.

Schedule.

* * * * * * *

485, Ranlett & Stone, Traveller, Dec. 28, 1893.
489, Ranlett & Stone, Pallas, Jany. 5, 1894.
490, " " Engineer, " 17, "

* * * * * * *

Exd. M. N. M.

Exhibit "H."—A copy—of which Exhibit "H" is the original—appears at page 19 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "H," does not appear on the copy as forth at said page 19;

22185. No. 485. Stamped: Custom House, received Jan. 15, 1894. New Orleans. Endorsed: 485. New Orleans, La., Jan. 15, 1894. Ranlett & Stone. Assessment duty at 2c per lb. on returned empty wheat bags, claimed to be free under par. 493, free list, Act Oct. 1, 1890, or Sec. 7, Act Feb. 8, '75. 38787 Po. Vessel "Traveller;" character of entry, Consumption; date of entry, Dec. 28, 1893; entry liquidated, Jan. 6, 1894; protest filed Jan. 15, 1894; appeal filed ——.

Exhibit "I."—A copy—of which Exhibit "I" is the original—appears at page 21 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "I," does not appear on the copy as set forth at said page 21:

22186. No. 489. Stamped: Custom House, received Jan. 27, 1894. New Orleans. Endorsed: 489. New Orleans, La., Jan. 27, 1894. Ranlett & Stone. 38787 Po. Assessment duty at 2c per lb. on returned empty wheat bags, claimed to be free under par. 493, free list, Act Oct. 1, 1890, or Sec. 7, Act Feb. 8, '75. Vessel "Pallas;" character of entry, Consumption; date of entry, Jan. 5, 1894; date liquidated, Jan. 18, 1894; protest filed Jan. 27, 1894; appeal filed ——.

Exhibit "J."

A copy—of which Exhibit "J," is the original—appears at page 23 of this transcript; but the following figures, stamp and endorsement as contained in said original Exhibit "J," does not appear on the copy as set forth at said page 23, viz:

22,187—No. 490—Stamped: Custom House, Received Feb. 3, 1894—New Orleans. Endorsed: 490—New Orleans, La., Jan. 30, 1894—38,787 Po Ranlett & Stone,—Assessment duty at rate 2c. per pound on returned empty wheat bags, claimed to be free under par. 493, act Oct.

1, 1890, or Sec. 7, act Feb. 8, 1875—Vessel, "Engineer;" Character of Entry, Consumption; Date of Entry, Jan. 17, 1894; Entry Liquidated, Jan. 25, 1894; Protest filed, Feb. 3, 1894; Appeal filed ———.

Exhibit "N."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
January 23, 1894.

Hon. T. S. WILKINSON, *Collector of Customs:*

SIR—Referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 8168, for 300 Bales Cental Bags, Ex | s-s. | Traveller, Dec. 26, 1893, I beg to state that these bags were thoroughly examined, and presented the same appearance as did all the preceding lots examined by this office and returned as containing bags of foreign manufacture.

These bales were returned by this Department as dutiable at 2 cents per lb. under par. 365. I beg to state further that we have complied with the regulations in the matter of the examination of these bags.

Enclosures are herewith returned.

Respectfully,
(Signed) CHAS. F. ALBA,
Appraiser.

Exhibit "O."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
February 2, 1894.

Hon. T. S. WILKINSON, *Collector of Customs.*

SIR—Referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 103, for 100 bales empty wheat bags ex. s-s Pallas, from Liverpool, January 4, 1894, I beg to report:

That this importation bears the same appearance as did the several similar lots returned by this Department as containing bags of foreign manufacture, and was returned as dutiable at 2 cents per pound, under paragraph 365.

I beg to state further, that this lot was examined carefully and the regulations complied with relative thereto.

Enclosures are herewith returned.

Respectfully.
(Signed) CHAS. F. ALBA,
Appraiser.

(1 set Enclosures.)

Exhibit "P."

PORT OF NEW ORLEANS, LA., APPRAISER'S OFFICE,
February 16, 1894.

Hon. T. S. WILKINSON, *Collector of Customs.*

SIR—Referring to the protest of Ranlett & Stone against the liquidation of Impost Entry No. 339 for 100 Bales Bags, Ex s-s Engineer, from Liverpool, January 15, 1894, I beg to state, that this importation of

bags, claimed to be entitled to free entry as bags of American manufacture, was found upon examination in this department, to contain bags of foreign manufacture.

In accordance with the above finding, the invoice was returned for duty as "Empty Jute Grain Bags" at 2c. per lb. under Paragraph 365.

Enclosures are herewith returned.

Respectfully,

(Signed) CHAS. F. ALBA,
Appraiser.

Exhibit "Q."

EMPTY GRAIN-BAGS.

Mr. HENRY CHARNOCK, being sworn, testified as follows:

Q. What is your business, Mr. Charnock?

A. Importer.

Q. Have you imported grain bags?

A. Yes, for a number of years.

Q. How many years?

A. I suppose fifteen or eighteen years. Fifteen years, at least.

Q. In the course of your importations have you just sold the bales as they came through your hands, or have you had occasion to open and examine them?

A. No, sir; we sell them as they come to us, and never have occasion to open them unless in case of damage or sea damage, where they were opened to make settlement with the insurance company.

Q. Have you ever manufactured bags?

A. No. I have them manufactured here by others occasionally.

Q. Have you dealt in domestic grain bags?

A. What would you call domestic grain bags?

Q. I mean, have you dealt in bags manufactured here, outside of your importations?

A. Yes, I have had some manufactured here; I have a lot of centals here now that were manufactured here.

Q. Did you see them—the individual bags—or simply the bales?

A. Those manufactured here, I saw the individual bags.

Q. What experience have you had in the examination of bags that would enable you to distinguish between a foreign and a domestic made bag?

A. The only experience I have is: When the question came up as to what were foreign and what were domestic—the testimony that I had read and seen given. The testimony of the people in New York—this man Collins in New York (I think his name is Collins) gave testimony as to the difference in stitch; and then I have examined very largely when in Europe. I have gone to the warehouses and examined to see if we could distinguish between them, with a view of buying solely those of American manufacture—that we could prove to be of American manufacture?

Q. Did you find distinguishing marks?

A. Yes, we found distinguishing marks. Those sewed with white thread, cotton thread, we concluded to be made in America. I believe

there is a factory in California where they manufacture by the overhand stitch, as well by machinery. I am under that impression but do not state it as positive. Foreign bags are all overhand stitch as a rule, that is cental bags, but there are those that have been mixed with them, called "River Plate" bags manufactured differently, sewed with flax thread.

Q. Do they sew any American bags with flax?

A. Not that I know of.

Q. Do they sew any foreign bags with cotton thread?

A. Not that I am aware of. They use either flax or hemp or jute.

Q. Are the characteristics that you have mentioned common to all the bags of both kinds respectively?

A. No, as I stated, I understand there is a factory in San Francisco, or in California somewhere, that makes bags and that they use jute or hemp twine and sew on the same kind of machine used in Calcutta.

Q. Would there be any mark by which to distinguish between those and the Calcutta bags?

A. No, I have never seen the two to distinguish. I have heard that the evidence was given. As it is only hearsay I can not say it is so.

Q. Do you know how many bag factories there are in the United States?

A. No, I do not.

Q. I will show you the official samples of your three importations, which the examiner states consist of one foreign bags taken from each of the bales examined. Please examine them and state whether you find any of them which you consider to be of America manufacture?

A. (After looking over the samples.) Well, to the best of my knowledge, I would say that all these are of foreign manufacture. Every bag that is there, as far as I can judge. Now I would not consider these to be fair samples of the shipment because nearly all the bales have more or less American bags in them. I have seen a bale that has come out that has been simply imported bags alone.

Q. Have you any knowledge of the percentage of foreign bags there were in those bales?

A. I have not, sir.

CHARLES W. KEETING, U. S. Examiner of Customs, being sworn, testified as follows:

Q. How many bales of the three hundred and twenty covered by Mr. Charnock's three protests did you open and examine?

A. I could not state the exact number. Sometimes I would not take a sample out of a bale. Of course, I can't remember back, but I know that these samples came out of different bales. I would hardly ever take two samples out of one bale.

Q. Then these samples each represent that you consider to be a foreign bag in the bale.

A. Yes, sir.

Q. In making your examination, did you ascertain the proportion of American and foreign made bags?

A. I would make it, not perfectly exact, but in going through a bale, if I separate it, it is more difficult to get it together; but in going

through the bale when it is opened, I came at a very close estimate, and I found that when I did open the bales it corresponded with my estimate. To show you: In opening some of the bales, I found two hundred and fifty American bags out of the thousand, and in others I would not find but one hundred; so they would vary, but the average in the whole importation was pretty nearly the same. When I came to count five bales my average would be the same. The more bales I would count, the greater average would be my foreign bags. In three bales I found eighty-one per cent. and a fraction, foreign; and on five bales I had (86) eighty-six, per cent. foreign. I just want to state to you that, of course no one can be positive, but from close examination we have taken every method to try to be just about it.

Q. Did you find the percentage of American bags in Mr. Charnock's importations to be about what it was in the others?

A. Yes, there was only one I thought had a larger proportion that I remember, on the American bags.

Q. What was the proportion?

A. Well, I should judge that importation of one hundred bales to be twenty-five per cent. American.

CHAS. W. KEETING, being duly sworn, testified as follows:

Q. What is your business, Colonel?

A. United States Examiner of Customs.

Q. How long have you been engaged in that business?

A. Well, about seven or eight years altogether.

Q. Have you examined, as a rule, the grain bags imported here?

A. I have since last October.

Q. Did you examine the grain bags imported by Ranlett & Stone by the "Engineer" on August 14th, 1893, by the "Vesta" October 31st, 1893, by the "Legislator" October 3rd, 1893, "Assaye" November 11th, 1893, "Traveller" December 28th, 1893, "Pallas" January 5th, 1894; and by Henry Charnock by the "Engineer" January 16th, 1894, "Electrician" November 13th, 1893; and by James S. Richardson by the "Engineer" September 1st, 1893, and by the "Legislator" on September 9th, 1893?

A. Yes, sir. Of course, I don't remember all the exact dates, but those are the importations.

Q. Now, I will take the entry by the "Engineer," August 14th, 1893, protest No. 21861 B., and ask you to give an account of the examination you made in that case.

A. Invoice 3880 of that entry covers 300 bales.

Q. How many bales of that invoice were ordered to the public store?

A. Thirty.

Q. How many of those thirty bales did you examine?

A. Six.

Q. Have you representative samples of the six bales?

A. Yes, sir; here are the samples. I took out a sample, usually, out of every bale that I opened.

Q. How many bags are there in each bale?

A. There are supposed to be a thousand bags in each bale.

Q. How many bags did you take out and reserve as samples from each bale?

A. One from each bale I opened.

Q. Do you think one bag would be fairly representative of the character of a bale?

A. Yes, sir; I examined minutely the bale as I opened the bags, but I thought that certainly six would be enough of the invoice to show.

Q. Did you find bags of different character in a bale?

A. Yes.

Q. Did you find some of American manufacture?

A. Some few, yes sir.

Q. And some of foreign manufacture?

A. Yes, sir.

Q. Well, which would that one bag you took out represent?

A. Represent the foreign manufacture.

Q. Then it would not be a representative sample of the bags of American manufacture that were in the bale?

A. No, sir, I took out no samples of those of American manufacture.

Q. Then, would you call it a representative sample of the bags contained in that bale?

A. I would of the ———.

Q. No, I don't ask of any particular kind, but I say, of all of them?

A. Well, according to my understanding of my duties as an examiner, I should. Yes.

Q. But I understood you to say that it was a bag of only one of the kinds that was in the bale?

A. Yes; but I say I did not understand it to be my duty as an examiner that I should have anything to do with the few American bags I came across. I took the samples to show that foreign manufactures were found. I supposed if seventy-five per cent. of the bags in the bale were of foreign manufacture, it carried the whole of them. That was my idea as an examiner, and the quantity in all these importations where I opened the bags and counted I found along about 80 to 86 per cent. foreign make.

Q. Were your examinations of all these invoices covered by the entries I have named, made in relatively the same proportions? That is, here you examined six bales out of three hundred; did the examinations of the other invoices bear relatively the same proportion?

A. No, sir. Some I examined every bale of the whole entire invoice. Where there were one hundred I have examined the whole hundred bales. Some I have opened a larger percentage than of others.

Q. Now, I show you invoice No. 3881 covering 100 bales, and ask you how many of those bales were ordered to the public store?

A. Ten.

Q. And how many did you open and examine?

A. I may possibly have opened a bale and not kept a sample. Of course, it is hard for me to remember all that.

Q. And the samples you have reserved are samples of the bags you considered foreign?

A. Yes, sir.

Q. But you did not retain in any of those, I understand, samples of bags you considered to be of American manufacture?

A. No, sir.

Q. Now we will take invoice No. 3882, covering two hundred bales. How many of those bales did you open and examine?

A. There were twenty bales sent to the appraiser's store, and I took samples out of five bales.

Q. And the samples you took were of bags you considered to be foreign made bags?

A. Yes, sir.

Q. If you could say about what proportion your examination covered—

A. I will state these are the first. I increased the number afterwards, in the examination of the bales sent to the appraiser's store. You know that these bags are pressed with very severe pressure, and of course it marred the appearance and condition of the bags in opening, and I opened just as few bales as I possibly could in order to find the correct status of the bags. As soon as I found that there might be a call for more, I opened ten per cent. of the bales. These first invoices contain a less percentage opened than any of the other invoices.

Q. Now we will take up the next protest, No. 21862 B., invoice 4505, 200 bales; how many bales did you open and examine?

A. Twenty-eight bales went to the public store, and I kept samples of five.

Q. You opened and examined five bales?

A. Yes, sir.

Q. Now, I will show you invoice No. 4506 covering 125 bales and ask you how many bales you opened and examined of that lot?

A. Four. The last importation where they would send a percentage, I opened all of them.

Q. Those invoices are not before us now?

A. No, I suppose not.

Q. Now we come to protest 21863 B. I show you invoices 4202–03–04–05, covering six hundred and fifty bales, and ask you how many bales you opened and examined?

A. Eighteen out of the six hundred and fifty bales.

Q. Now, protest 21965 B, covering eight hundred and fifty bales?

A. Sixteen bales.

Q. Now, I show you invoices covered by protest 22185, for three hundred bales, and ask you how many bales you opened and examined?

A. Nine.

Q. Now, protest 22186 covering one hundred bales; I ask you the same question.

A. Ten.

Q. Did you reserve a sample from every bale you examined?

A. No, sir. I examined all that were sent here.

Q. I mean, did you reserve a sample from every bale you opened?

A. No, I didn't take a sample from every bale opened.

Q. Well, do you think you opened and examined more bales on this invoice than are represented by the samples here?

A. Oh, yes, I feel very confident of that. I feel sure I didn't take some out of each bale I opened.

Q. Did you open every bale sent to the public store?

A. No, I did not open them all.

Q. Well, could you make any positive statement as to the number?

A. No; I used my judgment to try to open sufficient to get at the classification of the goods.

Q. Can you, in your opinion, determine the classification of a bale of bags without opening it?

A. Well, yes, in the same invoice. We do that in all our departments. We don't examine all the bags,—and I don't think all are opened in any port in the country, where we are satisfied that all run about alike.

Q. Have you ever been in the bag business?

A. No, sir.

Q. How do you derive your knowledge on the subject of grain bags?

A. Well, from a study of the business, like everything else.

Q. How long have you studied it?

A. I have studied it more or less for the past number of years.

Q. How many years?

A. Well, I have given it some study for two or three years, and close study for the last few months since it has been thrown on my hands to examine them.

Q. Then your study of the question has been as an examiner?

A. Yes, sir.

Q. Do you feel that you are able to make the distinction between a bag of American manufacture and one of foreign manufacture?

A. I think so; yes, sir.

Q. What would you consider the distinguishing marks?

A. Well, the American bags are of two classes usually. We have them made up of the American jute, and then we have American bags made up of foreign jute. It is, as far as I have been able to learn, through the officers here and myself,—sent in to California, where they make these bags.

Q. Are you able to easily make a distinction between the American bag made of foreign jute and the one made of home jute—American jute.

A. The stitches in some of the bags are very much alike, but as I suppose you well know, nearly all the American bags made of foreign jute are subject to drawback, and are generally designated in that way for the drawback, whether accepted or not. Now, the foreign made bag always has the cotton selvedge in the bag. I will show you by cutting open one of these bags. And they are nearly all made with this overhand stitch—and the stitch is more irregular than the stitch of a similar kind of the American made bag.

Q. Are you speaking about foreign hand-made bags?

A. Yes.

Q. Would not the machine stitch be as regular in one as the other? That is, would not foreign machine stitch be as regular as the American machine stitch?

A. I suppose so, made on the same kind of machine.

Q. Well, do you know whether any foreign bags are made with machines or not?

A. Yes, I have seen foreign bags, made on machines.

Q. The same kind of machines?

A. Well, I couldn't say.

Q. The distinction I understand you to make is between foreign hand-made bags and American hand-made bags, but you have not drawn the distinction between foreign machine-made bags and American machine-made bags. Can you draw that distinction?

A. I have never seen an American machine-made bag made exactly like a foreign-made bag.

Q. What is the difference between the two?

A. The foreign made bag has generally a coarser stitch.

Q. The machine stitch is coarser?

A. Yes, sir, my experience is that it is.

Q. Well, how do you derive your knowledge about that? Did you know positively that the bags with this coarser stitch were foreign made?

A. In my opinion it was, but it is difficult to give an explanation.

Q. Are you at all acquainted with the manufacture of foreign bags?

A. Well, somewhat. Not very much. I am not otherwise than in the examining room.

Q. Were you ever in the bag business?

A. No, sir, I never was in the bag business.

Mr. RANLETT asks:

Q. You say that the foreign bag is always made with cotton selvedge?

A. Yes, sir; I have never seen any without.

Q. The American bag has at times the cotton selvedge?

A. Yes, sir.

Q. Then, that wouldn't be a distinction?

A. Yes, sir; I can illustrate that with samples here and prove it. We have taken the means to send to the factories and get ourselves up on it.

Q. How many factories did you send to?

A. Two in California.

Q. Those samples would represent those made by those two factories, but not necessarily by those throughout the United States?

A. Yes, sir.

Q. I would like to know if you have any positive distinguishing mark by which you can distinguish a difference?

A. Only these marks I have stated and the general appearance. I have given it pretty close study, and as you know, I have handled a great number of these bags. I suppose I have opened more bags in my capacity than were ever opened before, since New Orleans was a port of entry.

By Mr. W. (in pencil):

Q. You say that you have opened a great many bales of bags, and, have, therefore, been enabled by that experience to discriminate between the foreign and the American made bag?

A. Yes, sir.

Q. Now, I ask you what standards you went by to arrive at the determination that a bag was a foreign made bag?

A. Well, outside of the general appearance, I took the stitch and so forth.

Q. Unless you had something to go on—

A. Well, in the foreign made bag the cloth seems to be different.

Q. How did you get to know this different appearance?

A. By the custom of handling these bags, as we find out how to tell a piece of counterfeit money, by its feel and appearance.

Q. But unless you had some standards of American or foreign bags to go by—

A. I don't think they can produce an American made bag in this country like this bag (holding up bag). Not in the whole country.

Mr. STONE asked:

Can you tell the difference between the foreign and American manufacture by the cloth?

A. Not always. I say the general appearance.

Q. Is it not a fact that American bags are frequently made of foreign cloth?

A. Yes, and that is the reason we sent to California. I noticed that nearly all the bags I found with the selvedge showed that they were made of foreign material.

By Mr. WILKINSON:

I noticed your notations on this invoice are as follows: "After a careful examination of this importation, we are of opinion that foreign made bags are contained therein."

A. My reason was that I considered if there were twelve foreign made bags in the whole lot, they should pay the full duty on foreign made bags. That is my understanding; that the bale is a unit.

Q. Then, did you prepare any data as to the percentage of foreign or American bags contained in these bales?

A. Yes, sir, I estimated in counting some of the bales, and formed an opinion without opening or destroying or marring the appearance of all the bales that were sent here, and I would ask Mr. Prudhomme, the Assistant Appraiser, Mr. Alba, the Appraiser, and Mr. McEnery, the Special Agent, to judge with me on the percentage of the bags. I don't think, in my opinion, from my experience in examining, that there is in all these invoices an invoice that would show over twenty-five per cent. of American bags in the invoice.

Q. In your examination of these various lots did you take any one bale and examine every bag in that bale?

A. I did not count them out in these lots; I only ran through them.

Q. You did not examine every bag?

A. No.

Q. Have you got any data by which you can give the exact percentage of American and foreign made bags covered by the protest now being considered?

A. No, I can not give specific details for each invoice, but in general I found from seventy-five to eighty per cent.

Q. And you retained no samples of the American made bags?

A. No, sir.

Q. And then, you could not tell precisely what percentage of foreign made bags in those bales is represented by the samples now under consideration?

A. Well, this I know very near because I went through and counted the bags. Of course, I didn't separate each bag.

Mr. DAVID GLOVER, being sworn, testified as follows

Q. What is your business, Mr. Glover?

A. Bag manufacturer.

Q. How long have you been in that business?

A. In manufacturing bags? I think about four years; but I have been handling bags for these past twenty years.

Q. What kind of bags have you handled?

A. All kinds: Burlaps, and oats and corn bags, both foreign and domestic.

Q. What are the distinguishing marks between foreign and domestic bags?

A. I could not tell.

Q. What are the distinguishing features of the bag in its finished condition?

A. I could not tell that.

Q. Could you tell by looking at a bag whether it was made abroad or in this country?

A. No, sir.

Q. I suppose there are some kinds of bags that bear very prominent distinguishing features, are they not?

A. There are some sewed with tarred twine that I would think were of foreign make, but I could not swear to.

Q. Please look at that bag (handing witness bag) and tell me if you could say whether it is of foreign or American manufacture?

A. I could not tell, sir. I could not swear to it by any of them.

Q. You couldn't swear that any of them are of American manufacture; either American or foreign?

A. I could not swear to it.

Mr. RANLETT asked:

Q. Mr. Glover, you handle a good deal of burlaps at times?

A. Yes, sir.

Q. Don't burlaps come to this country, having cotton thread in the selvedge?

A. Yes, sir.

Q. Is that burlaps made up into American bags?

A. Yes, sir.

Mr. ALBA (handing bag to witness):

Will you please tell me whether this is an American made bag or a foreign made bag.

A. I could not tell. It has the appearance of an American made bag, but I would not swear to that.

Q. Will you please examine that bag and see if you find any cotton selvedge in it?

A. I don't see any cotton selvedge in that bag.

Q. Tell me what this bag is.

A. That has the appearance of an American-made bag.

Q. Has that cotton selvedge in it?

A. Yes, sir.

Q. By what do you distinguish the manufacture of it?

A. By the sewing of it in the mouth. We sew them that way here.

Q. Do you mark your bags "with privilege of drawback?"
A. No, sir, I do not.

Mr. LEONARD NAEF, called for the government, being sworn, testified as follows:

Q. What is your business, Mr. Naef?
A. Secretary of the Elevator.
Q. How long have you been there?
A. Since 1881.
Q. Does that business lead you into handling bags?
A. Yes, sir.
Q. What class of bags do you handle?
A. The bags we handle are mostly bags that are lent (loaned) to the ships, filled with grain, and as a rule, shipped back again.
Q. What kind of bags—American make or foreign, or both?
A. They are supposed to be of American make.
Q. Have you had any experience in handling foreign-made bags?
A. I have seen foreign-made bags on English ships. We fill them as well as our own.
Q. Have you become acquainted with any marks of the two kinds of bags by which you could distinguish foreign made from American?
A. Most of the American made bags are sewed with chain stitch with thread. The foreign made bag—what I consider—is sewed overhand with more or less tarred thread.
Q. They are sewed by hand?
A. (Answer) I don't know. Some of it is, and some of it must be sewed by machinery because the stiches are regular.
Q. Is there any difference between the two?
A. Yes.
Q. You say the stiches are more regular?
A. Yes, sir.
Q. What would be the difference in appearance of an American bag made of foreign jute and sewed by machinery, and a foreign bag made of the same material and sewed by machinery?
If it was sewed by the same kind of machine, I guess they are about alike.
Q. Then you could not distinguish?
A. No, sir.
Q. (Showing bag to witness) Please look at this bag covered by invoices marked "Exhibit 1," protest No. 21861, and tell me whether, in your opinion, that is a foreign or a domestic made bag?
A. I would consider it foreign made, but at the same time I would not swear to it.
Q. Why would you consider it foreign made?
A. On account of the sewing.
Q. Is it hand-sewed or machine-sewed?
A. That is machine sewing with double thread. We don't do that here, in general.
Q. Will you please look through these bags that we have just taken out and see if you find any in them that you consider of American make?
A. I could not swear to it that they were American make.

Q. Could you say whether they were foreign made or not?

A. No, I could not.

Q. Well, from the appearance of those bags, would you not judge them to be foreign?

A. I would; but could not swear to it.

Q. In your judgment, as an expert, would you class those bags as foreign or American?

A. In my judgment, I would think some of them are foreign and some of California make.

Q. Please pick out some that you consider of American make.

Recess—for Lunch.

Q. After the further examination of the bags that you have made at my request, do you find any reason to change the testimony that you gave in the first part of your examination?

A. Well, as I stated, those sacks are sewed by hand; those twenty-three; and the others are the same make we receive from California;—and as I stated before, those we receive off the ships are sewed with more or less tarred thread.

Q. In your judgment, would you state whether or not all the bags that you have examined,—which are all the samples under consideration,—are American made with the exception of twenty-three?

A. No, I could not state that. It is simply my idea, but I could not swear whether it is American or foreign made; but what we have already taken on the foreign ships as being foreign are generally sewed with tarred thread.

By Mr. ALBA:

When I showed you this bag, you told me that you could show me that this was a California bag, and you could show me a whole lot made like it. Please show me any other bags made like it. Please tell me if this bag is made like that.

A. The same machinery is not used everywhere, but I consider it a California made bag. They are all turned over that way, and as a rule, the foreign made bags are not.

Q. Will you tell me if this is a California machine-made bag (showing witness another bag)?

A. That is a hand-made bag. I don't know where it is made; It is hand-made.

Q. Well then, it is a different make?

A. Yes.

Q. Please show me those bags that you consider American bags that are made like this or like this,—"Exhibit 3." Is that a foreign made bag (showing him California made bag,—"Exhibit 4")

A. Yes, I think it is, the way it looks.

Q. Did you not say that bags made with tarred thread are foreign made?

Witness answered that he didn't look at the other side, or end, but that anybody could see it was tarred or waxed (meaning the thread).

Mr. C. F. ALBA, being sworn, testified as follows:

Q. Please give your business and so forth.

A. I am the United States Appraiser at this Port.

Q. Have you had any experience in handling bags or the manufacturing of bags?

A. No, sir.—I want to state that I wrote to California for a sample bag from each manufacture of bags in California, with the exception of the bags manufactured in the penitentiary. And those are the two bags,—Exhibits 3 and 4 are the samples sent from the only two manufacturers in California, by the Appraiser at San Francisco.

Mr. RANLETT asks:

Are those all the factories in the United States?

A. No, sir, I suppose not.

Q. Have you any other samples that you received from anywhere else in response to letters?

A. No, sir; I have written to nowhere else, because those American bags claimed to be California bags.

Q. I called on you in December, and asked you why you did not endorse the proportion of bags that you, in your opinion, found as foreign, on each invoice. Do you recollect what your reply was?

Ans. My reply was exactly the one made by Mr. Keeting; That we were of opinion that when bags of foreign origin were found among them, that it carried the whole bale.

Q. Did you not state to me that you could not ascertain that without going all through the whole bale, and that you didn't intend to do that?

A. I said we could not ascertain that unless we counted bag by bag, which is correct.

Q. And that you would not do it?

A. We could not unless authorized; unless you sent us a written order or agreement, and, of course, we would have agreed to it.

Q. There was no statement of that kind made at that time about an agreement?

A. What agreement.

Q. Agreement to open bales or anything else.

A. My recollection is that in the early part of December you wanted me to change the returns, or have put on the returns the proportion of bags found; and that could not be done as our returns had already been made.

Mr. J. W. STONE, being sworn, testified as follows:

Q. What is your business, Mr. Stone?

A. Importer and commission merchant.

Q. You deal in bags?

A. Yes, sir.

Q. How long have you dealt in them?

A. About six or seven months.

Q. Have you ever manufactured bags?

A. Never.

Q. Do you suppose that you have handled them long enough to acquire an expert knowledge?

A. No, sir.

Mr. RANLETT asks:

In the early part of December, did you call with me to see Mr. Alba?

A. Yes; about December first. I made a notation of it in a little book.

Q. Will you recite what you know of the conversation that took place with Mr. Alba in relation to the endorsement of the percentage of bags found in each bale?

A. We called on Mr. Alba, and he told us about how he was going to return the invoices. As near as I can remember at the time, he said he was going to return them that in his opinion the bales contained bags of foreign manufacture; and we asked him were all the bags of foreign manufacture, and he said no,—that about one in every four or five was American. Then we asked him would he endorse that on the invoice; endorse the percentage of American made and foreign made bags on the invoices returned,—and he said no he could not do that without going through the bales, bag by bag and counting out the percentage,—and that he could not do that and would not do that. As I remember, that was about December first, and I think the invoice was passed about the 11th, but I am not positive of that and could not say.

Mr. ALBA asks:

Is it not a fact that you have seen the returns yourself, made on the invoice? and Mr. Stone answered, Yes sir.

By Mr. ALBA:

Then, I did not tell you that I had made those returns or that I would make those returns that way.

Mr. Stone: I saw it in one case, yes.

Mr. Alba: Then I did not say I would make all my returns that way on bags to be examined, nor did I say to you that I made all my returns as containing foreign bags.

Mr. A. S. RANLETT, being sworn, testified as follows:

Q. Your business, Mr. Ranlett?

A. Commission merchant.

Q. Do you handle bags?

A. Yes, sir.

Q. Domestic as well as foreign?

A. We don't do anything, or very little, in bags that are handled here. Our business is confined principally to importing. We have been importing about 6 or 8 months.

Have you ever manufactured bags?

A. No, sir, I never have, but the old firm, twelve or fifteen years ago, did; but I have no knowledge of it.

Q. In your importations have you dealt intentionally in foreign as well as American made bags?

A. Yes, sir, but of different classes of bags. Those we import as foreign made bags are Dundee bags, used for cotton seed.

Q. What are those in controversy used for?

A. Those are used mostly by the oil mills for cotton-seed meal, and by the Levee Boards in times of overflow.

Q. It is, then, rather an inferior bag—this importation—to the Dundee bag?

A. It is a different style altogether. These are worth now about 6¼ cents, and Dundee bags are worth about 9 to 10 cents.

Q. Well, taking bags of this class and size, is there any difference between the price in the foreign market of the foreign bag and that of the American bag?

A. None that I am aware of; none whatever.

Q. Does not the American bag bring a higher price because it is entitled to free entry here?

A. I should think it would if the people on the other side could distinguish them, and separate them, and guarantee their free entry, but I don't think that is ever done, or can be done abroad. I don't think they know the difference. But there is no difference, as far as we know, in the price of bags abroad, between American made and foreign made. I will state that we are prepared to show that the prices at which we bought these bags abroad, and the prices at which we made our sales here do not justify any room for the payment of a fraction of duty. I say this to show that they were not bought abroad as foreign bags with the intention of bringing them through as American.

Q. Have you acquired sufficient expert knowledge from handling bags to distinguish between a foreign made and an American made bag?

A. Well in some cases, I can tell some American made bags I think, that are distinctively American.

Q. Could you examine these samples that are under consideration, and point out the bags of American production; that you are satisfied, as an expert, are of American production?

A. I think I could,—yes, sir,—if any of them bear those marks by which I know them to be distinctively American. If a bag is sewed up on a machine with a cotton thread, I should think it to be American. Outside of that, I don't think I could.

Q. Will you examine every sample here, and pick out those which as an expert, you would state to be of American origin?

A. I will commence by replying that I am not an expert. The only way I can tell a bag to be distinctively American is when it is sewed up on a machine with white cotton thread—and I find none of that particular kind in this lot.

Q. You are not familiar with all kinds of American bags?

A. No, sir. My experience has been limited, and we rarely see the bags, as we hardly ever think of opening a bale—up to the time this examination commenced.

Q. In your contracts that you made, Mr. Ranlett, did you specify that the bags to be delivered to you should be of American origin?

A. Well, we took an even safer step than that, you might say, although we were not aware of any trouble of this kind in view. To guard ourselves, we exacted from the shippers that they should enter this country free of duty, and they invoiced them as bags of American manufacture, and contend that they are still entitled to free entry; and the consequence is, we are still unable to collect our guarantee.

Q. In regard to the point that you have made concerning the number of bales examined, have you got any evidence to show what the number was?

A. Yes, sir. At the time of withdrawing them from the custom house we kept a record of every bale that had been opened.

Q. Have you got that record?

A. Yes, sir; I will read it out: "Engineer," six hundred bales, entry of August 14th, 1893—eighteen opened. "Legislator," six hundred and fifty bales, September 7th, 1893—nineteen bales opened. "Vesta" 325 bales, October 9th, 1893—thirteen opened. "Assaye," November 8th, 1893, 850 bales—sixteen opened. "Traveller," December 26th, 1893, 300 bales; fourteen opened. "Pallas," January 4th, 1894, 100 bales; ten opened. "Engineer," January 15th, 1894, 100 bales; ten opened.

Q. Did you ever make any request to the appraiser to examine a larger proportion of the bales?

A. We didn't know at any time how many were being examined, but when we found they were not examining all—from that on we believe they examined a larger quantity—and we at one time afterwards we sent a written communication asking to have a larger quantity examined, subsequent to the cases now under consideration.

There is also returned herewith marked Exhibit "S," a copy of the opinion of the board referred to in the decision herein as G. A. 2448.

There is also returned herewith marked Exhibit "T," a copy of the opinion referred to in the decision herein as No. 18225, et al (G. A. 2610.)

Exhibit "R."

(15070—G. A. 2623.)

GRAIN BAGS, RETURNED DOMESTIC.

Before the U. S. General Appraisers at New York, May 21, 1894.

In the matter of the protests, 21861*b*. etc., of Messrs. Ranlett & Stone et al., against the decision of the collector of customs at New Orleans as to the rate and amount of duties chargeable on certain grain bags, imported per the vessels and at the dates named in the annexed schedule.

Opinion by Sharpe, General Appraiser.

These protests cover some three and one-half millions of bags, entered at the port of New Orleans at different times between August 14, 1893, and January 15, 1894.

It appears from the papers that they are empty grain bags made of jute, of the kind commonly known as centals. They arrive in large quantities, each bale containing 1,000 bags, one of these importations comprising 850,000 bags.

They are claimed variously in the protests—

(1) To be entitled to free entry under paragraph 493, N. T., as manufactures of the United States.

(2) That the bags of foreign manufacture are entitled to free entry under paragraph 649 of the act of March 3, 1883, "which has not been canceled" by the act of October 1, 1890.

(3) That they are free under section 7 of the act of February 8, 1875, which is claimed to be unrepealed.

(4) The claim is also set up that the examination by the appraiser was not fairly and faithfully made, one of the written arguments submitted to the board urging that the examiners' estimate was "not based on facts such as could be derived only from an actual and careful count of the

packages bag by bag," and the importations to which this argument applied contained 2,925,000 bags.

The appraiser reports that one of the importers stated that the bags were sold abroad to them as being free of duty, and if found to be of foreign manufacture, they (the importers) would hold the foreign exporter. One of the papers submitted in the case also states:

These bags have been bought with the usual guaranty of free entry into this country from the parties in England, and are therefore supposed to be all bags of American manufacture.

The officers of the appraiser's department strongly assert the fairness and faithfulness of the examinations made, and a very burdensome amount of labor seems to have been done to reach a proper return. From some large invoices 10 per cent. of the bales was ordered by the collector. In some invoices of 100 bales and 150 bales, respectively, all were ordered by the collector, and from one invoice of 30 bales 4 were ordered for examination, and the 26 others were subsequently demanded and not delivered by the importer. It does not appear that from some of the invoices the full amount of 10 per cent. of the bales was ordered, but it does appear that all the merchandise covered by all the invoices was of the same character and description.

It was admitted that there were bags of foreign manufacture and American manufacture, all indiscriminately mingled together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence.

In a recent decision of protest 61329a, we have expressed some views in regard to the duty of importers in seeking the benefit of acts or parts of acts relieving merchandise from contribution to the revenue, and we hold similarly in the cases now before us. In a carefully prepared paper, in the nature of a brief or argument, by one of the protestants herein for the consideration of the board, at the time the oral evidence was taken, the claim is made that the documents required by regulations for the identification of the goods have been furnished, with the exception of those relating to merchandise exported by the *Viscount* from San Francisco, January 14, 1892, marked B. X. X. In regard to them, the protestants states: "These are not available, having apparently been used by others."

There are sundry other lots referred to in the brief where the absence of the identifying certificates is accounted for by the statement that they are "not available" or "not obtainable." It is also admitted in the same brief that sundry other lots are excluded from free entry by reason of their having received drawback on exportation, and these two classes admittedly excepted from the provisions for free entry cover many thousands of bags of the importations now under consideration.

These admissions add to the evidence we have *aliunde*, that not only are the so-called returned bags not seen by the foreign exporter, nor by the home importer, who both make oath regarding their manufacture, but the documentary proof of identity required by law is indiscriminately disposed of to anybody who has bags to sell and can find a purchaser in the United States. The brief or argument closes with this statement signed by the importer:

As I have not personally seen or inspected them (the bags), I am

unable to state whether they are all American manufactured or only a portion of the same. This evidence, I presume, will be furnished by the appraisers who have examined same.

The *onus probandi* of the appellants' claim is thus thrown upon the government officers, the propriety of which we can not admit.

The admissions above recited do not surprise us since in the evidence taken before us in G. A. 2448 proof was made that about thirty millions of cental bags are used for the exportation of grain from the Pacific ports, and only a small proportion of the centals thus used are of American manufacture.

The appraiser having examined all these importations and having reported the goods to be of foreign manufacture, duty was assessed by the collector on the bags under paragraph 365, N. T., at the rate of 2 cents per pound.

If this decision had been based on an insufficient examination, the importers might have asked for a re-examination, but they did not do so.

When, however, the protests came before the Board of General Appraisers on appeal, the insufficiency of, or alleged want of fairness in, the examination had no further relation to the decision of the case on the merits. The appellants were then here to prove their allegations, and they had abundant opportunity to do so. To suit their convenience, the testimony was taken at New Orleans, on notice, and all witnesses could be produced. The appellants then had their day in court, and they were there to establish affirmatively, and not by any indirect or negative testimony, the facts entitling their merchandise to free entry. The alleged inexperience of the government examiners could no longer be criticised, for the door was open for the entrance of all expert witnesses that could be produced. The testimony introduced failed to sustain the allegations of fact made in the protest and corroborated the returns of the examining officers, which we find to be true.

We hold that the provisions of the acts of March 3, 1883, and of February 8, 1875, under which alternative claims are made, are no longer in force. The facts proved and the claims made herein are in many points similar to those considered in passing upon those covered by protests 18225 et al. from San Francisco, and we refer to the views there held as applicable herein.

We find that these several protests have not been sustained, and we affirm the decisions of the collector.

(sd.) WILBUR F. LUNT,
GEORGE H. SHARPE,
Board of U. S. General Appraisers.

Schedule.

21861–B–476,	Ranlett &	Stone,	Engineer,	Oct. 10, 93.
21862–479	"	"	Vesta,	Oct. 31, 93.
21863–480	"	"	Legislator	Oct. 3, 93.
21965–481	"	"	Assaye	Nov. 11, 93.
22185–485	"	"	Traveller	Dec. 28, 93.
22186–489	"	"	Pallas	Jan. 5, 94.
22187–490	"	"	Engineer,	Jan. 17, 94.

Exhibit "S."

(G. A. 2448.)

FREE ENTRY OF FOREIGN-MADE CENTAL (GRAIN) BAGS—ACT OF FEBRUARY 8, 1875, NOT IN FORCE.

Before the U. S. General Appraisers at New York, February 3, 1894.

In the matter of the protest 55275*a* 12973, of Percy Kent, against the decision of the collector of customs at New York as to the rate and amount of duties chargeable on certain grain bags imported per St. Enoch, June 28, 1893.

Opinion by Sharpe, General Appraiser.

The protestant imported into the port of New York 75 bales of grain bags, the entry being made June 28, 1893, each bale being understood to contain 1,000 bags.

The merchandise was returned by the appraiser as empty grain bags, bearing evidence of foreign manufacture and of having been used in the transportation of American products.

On this report duty was assessed by the collector thereon at two cents per pound, under paragraph 365, there being no dispute that the bags are made of burlaps and are imported empty.

The protest claims—

(1) That the bags are entitled to free entry, under paragraph 493, as bags of American manufacture, exported filled with American products; and

(2) That if not free under said paragraph of the present act they are entitled to free entry under section 7 of the act of February 8, 1875, providing that bags other than of American manufacture, in which grain shall have been actually exported from the United States, may be returned empty to the United States free of duty under regulations of the Secretary of the Treasury. The alternative claim is reinforced by the contention that the act of February 8, 1875, is still in full force and effect, not having been repealed by any statute of the United States.

The greater part of the bags in which grain is exported from the United States leaves the country by the ports of the Pacific coast, and in the hearing before us proof was made that about 30,000,000 are used for the exportation of grain. About 5,000,000 of bags are made in California, and we have evidence to show that during the year 1892 30,000,000 of cental bags were exported from Calcutta to the Pacific ports of the United States, and about 4,000,000 to the port of New Orleans.

The number of second-hand bags, or returned cental bags, imported into the ports of the Eastern coast, New York, New Orleans, Boston, Baltimore, and Philadelphia, appears to be not less than 10,000,000 annually.

In may thus be reasonably supposed that of the bags returned empty to this country, which have been previously exported filled with grain, the greater proportion are of foreign manufacture, and, on the hearing, it was not denied that about 80 per cent. of the importation under consideration were foreign bags.

On their return to this country, the bags of foreign and American manufacture are brought in, indiscriminately mingled together in the same bale, leaving to the customs officers the tedious and laborious duty of separating them in order to establish the rights of the Government, and involving an expense perhaps equal to the duties to which the Government may be entitled.

It also appeared on the hearing that many bags on which drawback is claimed in San Francisco, as being made in this country from imported material on which duty has been paid, have a continuous black stripe, an inch wide to indicate claim for drawback, and it may be well believed that such a mark would not be omitted from merchandise entitled to a privilege over other merchandise of the same kind.

There was little conflict upon the question of fact, but on the hearing the importer's counsel relied mainly upon the argument that section 7 of the act of February 8, 1875, remains in force, and on that contention briefs were submitted for the importer and also for the collector.

It is claimed for the appellant that paragraph 493 of the act of 1890, is a substitute for paragraph 649 of the act of 1883, and that the latter act would have operated as a repeal of section 7 of the act of 1875 as effectively as the act of 1890.

It is argued that the Treasury Department, however, in 1884, in article 381 of the Regulations of that year, provided for the free entry of bags other than those of American manufacture, in which grain shall have been actually exported from the United States, and by a circular of October 20, 1890 (Synopsis 10291), the Department recognized the act of 1875 as being in force after the passage of the act of 1890.

Further recognition of section 7 of the act of 1875 by the Department, after the passage of the act of 1883, is claimed from the fact that in a document published by the Department entitled "Tariffs of 1883 and 1890 on imports into the United States," there was included in brackets with a subdivisional heading the language of the proviso to said section with a reference to the section and act.

However strong this implied construction may be, we find that later the question was distinctly presented to the Department, which on the date of August 22, 1893, (Synopsis 14281), used the following language:

Bags of foreign manufacture, exported with American products, will be subject on being returned to the United States, to the same duty as if they had not been previously imported, it being held by this Department, in accordance with an opinion rendered on the 20th ultimo by the Attorney-General, that section 7 of the act of February 8, 1875, which provided for the free entry of such returned foreign bags, is repealed by the act of October 1, 1890.

The appellants relied upon the case of Russell vs. Worthington (23 Fed. Rep. 248), where in March, 1885, or after the passage of act of 1883, a proviso to section 4 of the act of 1875 was held to be in force. But an examination of this case shows that the proviso was considered by the court with reference to an existing treaty, and not otherwise, and the proviso was held to be in force by reason of the treaty.

We hold, in accordance with previous opinions of the board, and with the language of the court in the case of Straus and others (46 Fed. Rep., 522), that the act of 1890 is a substitute for all prior tariff legislation,

so far as it lays a duty upon imported articles, and that paragraphs 365 and 493 cover all merchandise of the description under consideration that may be imported into the United States since the passage of the act.

We find as facts.

(1) That the bags had been used in the exportation of American grain, and were imported after such use as second hand bags, being for the most part known as cental bags.

(2) That such second-hand bags, or cental bags, are made in very large quantities in foreign countries, and to a comparatively limited extent within the United States.

(3) That two bales, taken and agreed upon as representative bales, having been carefully examined bag by bag, were found to contain, out of the 2,000 bags, 1,613 of foreign manufacture and 387 of American manufacture.

As a result of the foregoing holding and findings, we affirm the action of the collector upon such bags as are of foreign manufacture, and we sustain the protest on such as are of American manufacture, and we authorize a reliquidation upon the classification of all the bales of the importation according to the proportions of foreign and American bags found in the 2 bales referred to.

Exhibit "T."

(G. A. 2610.)

FREE ENTRY OF RETURNED AMERICAN GRAIN BAGS.

Before the U. S. General Appraisers at New York, May 2, 1894.

In the matter of the protest, 18,225–8 *b*, of Balfour, Guthrie & Co., and Calton, Bell & Co., against the decision of the collector of customs at San Francisco, Cal., as to the rate and amount of duties chargeable on certain grain bags, American manufacture, imported per *British Isles*, March 15, 1892; *Manx King*, July 26, 1892; and *Easteroft*, August 23 and 24, 1892.

Opinion by Sharpe, General Appraiser.

These protests cover four importations at San Francisco of bags made of burlaps, which had been exported filled with American products, and are returned empty. They are partly of American and partly of foreign manufacture. They are claimed to be of American manufacture and entitled to free entry under paragraph 493 of the present tariff; and the contention is also made that bags in which grain shall have been actually exported from the United States are entitled to be returned empty to the United States free of duty under regulations prescribed by the Secretary of the Treasury, under section 7 of the act of February 8, 1875. The provisions of this section apply to bags other than of American manufacture.

There is a further claim in the protests, that the U. S. Appraiser did not diligently and faithfully examine and inspect such packages as were designated by the collector. This allegation is specifically denied by the

appraiser, who reports circumstantially some of the methods of his examination and the acquiescence of the importer's representatives in the results reached.

No re-examination having been asked of or ordered by the collector, we must decline to allow any force in this claim.

In a case recently before us, arising in New York on a protest of Percy Kent (55275 *a*), the claim was made, as in this case, that foreign-made bags are entitled to free entry when returned to the United States, after being used for the exportation of grain, for the reason that Section 7 of the Act of February 8, 1875, is unrepealed. We there held the contrary of this contention, and we so hold in this case.

In the examination of the merchandise covered by invoice 3232, by the ship *British Isles*, it was found that the invoice had stated that 21,690 of the bags had been exported by the British ship *Aeolus*. This was a principal step to the identification of the bags; proof of which is required under the law and regulations. The examination showed that the 50 bales under consideration had all been exported by the *Crown of Denmark*, and none by the *Aeolus*. The identification, therefore, utterly failed, and not only was no attempt made to supply the failure, but the appraiser reported that upon this failure being made known to the protestants they notified the appraiser's department of their intention to pay duty on the importation, and the examination thereupon ceased. When the examination of the merchandise covered by the other invoices was reached, the appraiser reported that the protestants admitted that the bags were not all of American manufacture, and that they would be unable to prove them not to be foreign made. Several experts in San Francisco testified from the examination made that the percentage of foreign-made bags was very largely in excess of those of American manufacture, and the bags appear to have been indiscriminately mingled together, without any attempt on the part of the importer to separate them or to designate those claimed to be free.

Under these circumstances duty was assessed upon the entirety of the importation.

The customs officers claimed authority for such decision under a direction given by the Treasury Department (Synopsis 10,098), in July, 1890, where, upon a proposed importation of mixed cargoes of anthracite and bituminous coal in such a mingled condition as to render it impracticable to separate the free from the dutiable coal for the purpose of the accurate weighing of each kind, the collector was instructed that the whole cargo should be treated as bituminous and assessed for duty.

We also find that December 28, 1868, an importation was made into the port of Rochester of sundry bales of rags, as containing rags for the manufacture of paper, it being found that the bales contained not less than 40 per cent. of woolen rags. The law imposed a duty of 12 cents per pound on woolen rags, and admitted free such as were composed of cotton and linen and were intended for the manufacture of paper.

On this state of facts, the honorable Secretary of the Treasury instructed the collector as follows:

If you are satisfied that there was no intention on the part of the importers to conceal the dutiable rags by mingling them with others free of

duty, you will not hold them for condemnation, but will allow the parties to separate such as are dutiable from such as are not so, and make entry accordingly.

These instructions of the Department are in harmony with the determination of the law-making power upon cognate subjects, as by section 2912 of the Revised Statutes Congress enacted as follows:

When wool of different qualities is imported in the same bale, bag, or package, it shall be appraised by the appraiser, to determine the rate of duty to which it shall be subjected, at the average aggregate value of the contents of the bale, bag, or package; and when bales of different qualities are embraced in the same invoice at the same prices whereby the average price shall be reduced more than ten per centum below the value of the bale of the best quality, the value of the whole shall be appraised according to the value of the bale of the best quality; and no bale, bag, or package shall be liable to a less rate of duty in consequence of being invoiced with wool of lower value.

Section 2910, R. S., also provides:

When merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject.

Bags made of burlaps are dutiable, except such as are described in paragraph 493, and we hold it to be the duty of all persons bringing in goods claimed to be free, out of a class otherwise dutiable, to prove affirmatively the facts which constitute the exemption. We hold that they should separate and designate such merchandise accompanied by the evidence required by law, and we decide that in these cases the protestants failed to meet the requirements of law and regulations:

The decision of the collector in each case is affirmed.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other Exhibits hereto attached.

Board of U. S. General Appraisers.

(Signed) H. M. Somerville.
(Signed) George H. Sharpe.
(Signed) Charles H. Hane.

Motion and Order Fixing Cause.

Extract from the Minutes, November Term, 1894.

New Orleans, *Wednesday, December 12, 1894.*

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Judge.
In re Ranlett & Stone No. 12,313.
On motion of F. B. Earhart, U. S. Atty,
It is ordered that this cause be fixed for January 7, 1895.

Order—Continuance of Cause.

Extract from the minutes.

MONDAY, *January 7, 1895.*

IN RE STONE & RANLETT
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

On motion of counsel for both parties herein,
It is ordered that this cause be continued to Monday, January 21, 1895, at 11 A. M.

Motion to Strike Out and Disregard so Much of the Evidence and Decision of the Board of Appraisers Applicable to Other Cases.

Filed January 21, 1895.

United States Circuit Court. No. 12,313.

IN RE RANLETT & STONE
vs.
THE BOARD OF GENERAL APPRAISERS.

On motion of Thomas J. Semmes of Counsel for the importers, Ranlett & Stone and on suggesting to the court that in the decision and report of the General Board of Appraisers reference is made to other cases of other importers and to the evidence adduced in such other cases, the importations involved in this case covering 2,925,000 bags and the other cases covering 575,000 bags.

It is ordered that so much of the evidence given in other cases and so much of the said decision and report as relate to such other cases be stricken out and disregarded in the consideration of this case and for the purpose of more particularly describing the facts of said decision and report having no reference to this case the said Ranlett & Stone now file with this motion a copy of said decision and report and mark with ink on the margin in brackets such parts of said decision and report as are not applicable to this case but have reference to other cases in which said Ranlett & Stone have no interest whatever.

And the said Ranlett & Stone move to suppress all the oral testimony returned into court by the General Appraisers except that taken in this case a copy of which was filed in this Court with their petition on June 1, 1894, and is described "as examination of witnesses before General Appraiser J. B. Wilkinson at the Customhouse in New Orleans on 27 March, 1894.

Copy of the Decision of the Board of Appraisers—Annexed to Motion of Ranlett & Stone to strike out certain parts thereof indicated by brackets in ink.

No. pages 6.
Typewritten by C.
Compared by S.

For Publication.

In the matter of the protest 21,861–B, &c., of MESSRS. RANLETT & STONE, ET AL., against the decision of the Collector of Customs, at New Orleans, as to the rate and amount of duties chargeable on certain GRAIN BAGS, imported per the vessels and at the dates named in the annexed schedule.	Before the U. S. General Appraisers at New York, May 21, 1894.

Opinion by SHARPE, G. A.

These protests cover some three and one-half millions of bags entered at the port of New Orleans at different times between August 14, 1893, and January 15, 1894.

It appears from the papers that they are empty grain bags made of jute, of the kind commonly known as Centals.

They arrive in large quantities, each bale containing 1000 bags, one of these importations comprising 850,000 bags.

They are claimed variously in the protests, (1) To be entitled to free entry under paragraph 493 N. T. as manufactures of the United States. (2) That the bags of foreign manufacture are entitled to free entry under paragraph 649 of the Act of March 3, 1886, "which has not been canceled" by the act of October 1, 1890. (3) That they are free under Section 7 of the Act of February 8, 1875, which is claimed to be unrepealed.

(4). The claim is also set up that the examination by the appraiser was not fairly and faithfully made, one of the written arguments submitted to the board urging that the examiner's estimate was "not based on facts such as could be derived only from an actual and careful count of the packages bag by bag," and the importations to which this argument applied, contained 2,925,000 bags.

Page 2.

The appraiser reports that one of the importers stated that the bags were sold abroad to them as being free of duty, and if found to be of foreign manufacture, they, (the importers) would hold the foreign importer. One of the papers submitted in the case also states "These bags have been bought with the usual guarantee of free entry into this country from the parties in England, and are therefore supposed to be all bags of American manufacture."

The officers of the Appraisers' Department strongly assert the fairness and faithfulness of the examinations made and a very burdensome amount of labor seems to have been done to reach a proper return. From some large invoices 10 per cent. of the bales was ordered by the collector; in some invoices of 100 bales and 150 bales respectively, all were ordered by the collector and from one invoice of 30 bales four were ordered for examination, and the twenty-six others were subsequently demanded, and not delivered by the importer. It does not appear that from some of the invoices the full amount of 10 per cent. of the bales was ordered, but it does appear that all the merchandise covered by all the invoices was of the same character and description.

It was admitted that there were bags of foreign manufacture and American manufacture all indiscriminately mingled together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence.

In a recent decision of Protest 61,329-A, we have expressed some views in regard to the duty of importers in seeking the benefit of acts or parts of acts relieving merchandise from contribution to revenue, and we

Page 3.

hold similarly in the cases now before us.

In a carefully prepared paper in the nature of a brief or argument by one of the protestants herein for the consideration of the board, at the time the oral evidence was taken, the claim is made that the documents required by regulations for the identification of the goods have been furnished, with the exception of those relating to merchandise exported by the Viscount from San Francisco, January 14, 1892, marked B. X. X. In regard to them the protestant states: "These are not available, having apparently been used by others."

There are sundry other lots referred to in the brief where the absence of the identifying certificates is accounted for by the statement that they are "not available" or "not obtainable." It is also admitted in the same brief that sundry other lots are excluded from free entry by reason of their having received drawback on exportation; and these two classes admittedly excepted from the provisions for free entry cover many thousands of bags of the importations now under consideration.

These admissions add to the evidence we have *aliunde* that not only are the so-called returned bags not seen by the foreign exporter, nor by the home importer, who both make oath regarding their manufacture, but the documentary proof of identity required by law is indiscriminately disposed of to anybody who has bags to sell, and can find a purchaser in the United States. The brief or argument closes with this statement signed by the importer "as I have not personally seen or inspected them (the bags) I am unable to state whether they all are American manufactured or only a portion of the same. This evidence I presume will be furnished by the Appraisers who have examined same." The *onus probandi* of the appellant's claim is thus thrown upon the Government offi-

Page 4.

cers the propriety of which we can not admit.

The admissions above recited do not surprise us since in the evidence taken before us in G. A. 2448 proof was made that about thirty millions of cental bags are used for the exportation of grain from the Pacific ports, and only a small proportion of the centals thus used are of American manufacture.

The appraiser having examined all these importations and having reported the goods to be of foreign manufacture, duty was assessed by the Collector on the bags under paragraph 365 N. T. at the rate of 2 cents per pound.

If this decision had been based on an insufficient examination the importers might have asked for a re-examination, but they did not do so.

When however the protests came before the Board of General Appraisers on appeal the insufficiency of, or alleged want of fairness in

the examination had no futher relation to the decision of the case on the merits. The appellants were then here to prove their allegations and they had abundant opportunity to do so. To suit their convenience the testimony was taken at New Orleans, on notice, and all witnesses could be produced. The appellants then had their day in court, and they were there to establish affirmatively and not by any indirect or negative testimony, the facts entitling their merchandise to free entry. The alleged inexperience of the government examiners could no longer be criticised, for the door was open for the entrance of all expert witnesses that could be produced. The testimony introduced failed to sustain the allegations of fact made in the protest and corroborated the returns of the examining officers which we find to be true.
Page 5.

We hold that the provisions of the acts of March 3, 1883 and of February 8th, 1875, under which alternative claims are made are no longer in force. The facts proved and the claims made herein are in many points similar to those considered in passing upon those covered by protests 18225 et al. from San Francisco, and we refer to the views there held as applicable herein.

We find that these several protests have not been sustained, and we affirm the decisions of the Collector.

(Signed) WILBUR F. LUNT,
(Signed) GEORGE H. SHARPE,
Board of U. S. General Appraisers.

37 Enclosures.

Pro. red'd w. Col's Letters of Jan. 6, 18, Feb. 16, 94. Encls. s. herewith.

Copy of Oral testimony filed with Petition on June 1, 1894, and described as "Examination of witnesses before General Appraiser J. B. Wilkinson at the Customhouse in New Orleans, on 27 March, 1894," referred to in motion to suppress certain evidence at page 91 of this transcript: see also Note at page 27.

The said testimony being comparatively the same as that which appears from page 54 to page 76, inclusive, of this transcript.

Hearing and Submission of Motion to Suppress Certain Evidence.

Extract from the Minutes, November Term, 1894.

NEW ORLEANS, *Monday, January 21, 1895.*

Court met, pursuant to adjournment:
Present, Hon. Charles Parlange, District Judge.

IN RE STONE & RANLETT
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

In this cause, T. J. Semmes, attorney for the petitioners, this day presented a motion to suppress certain evidence in the record, as set out in the motion.

The United States Attorney on behalf of defendants objected to the granting of the motion, and after hearing argument of counsel, the Court took the motion under consideration.

Hearing and Submission of Cause.

Extract from the Minutes, Monday, January 21, 1895.

IN RE STONE & RANLETT
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

This cause came on this day to be heard upon the petition, answer and evidence, and testimony taken.

T. J. Semmes appearing for the petitioners.

F. B. Earhart, U. S. Attorney for the defendants and was argued by counsel, for the parties respectively, and submitted—when the court took time to consider—counsel to file briefs.

Decree Unsigned.

Extract from the Minutes, November Term, 1895.

NEW ORLEANS, *Friday, December 20th, 1895.*

Court met pursuant to adjournment.

Present, Hon. Charles Parlange, District Judge.

IN RE RANLETT & STONE
vs.
THE BOARD OF GENERAL APPRAISERS. } No. 12,313.

The court allows the motion of counsel for Ranlett & Stone to suppress the evidence taken in other cases, that is to say, the testimony of Henry Charnock and also the testimony of Charles W. Keeting on pages 5, 6 and 7, of Exhibit 2, filed in court as part of the return of the Board of Appraisers.

The court also allows the motion to suppress statements in the decision of the Board of Appraisers referring to matters in other cases than of Ranlett & Stone, to-wit: the following clause: "From one invoice of 30 bales four were ordered for examination and the twenty-six others were subsequently demanded and not delivered by the importer."

Also the following clause:

"It was admitted that there were some bags of foreign manufacture and American manufacture all indiscriminately mixed together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence."

Also all that part of the decision commencing with the words "in a carefully prepared paper in the nature of a brief by one of the protestants herein, etc." down to and including the following words: "and only a small proportion of the Centals thus used are of American manufacture." and it is ordered that all said testimony referred to in the said motion be suppressed as well as the statements aforesaid in said decision.

The court doth further order, adjudge and decree that the duties paid by the importers, Ranlett & Stone, on the two million nine hundred and

twenty-five thousand bags imported by them in the years, 1893 and 1894 and referred to in the decision of the Board of General Appraisers, rendered 21st May, 1894, and enumerated in the documents annexed to that decision, be refunded and paid to petitioners, Ranlett & Stone, to-wit: Two cents per pound on 600 bales of empty grain bags, entered per "Engineer," August 14th, 1893; 650 bales of same, entered September 7th, 1893, per "Legislator;" 325 bales of same, per "Vesta," entered October 19th, 1893; 850 bales of same, entered November 8th, 1893, per "Assaye;" 300 bales of same, entered December 6th, 1893, per "Traveller;" 100 bales of same, entered January 4th, 1894, per "Pallas," and 100 bales of same, entered January 15th, 1894, per "Engineer," and the court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be made aside, and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the court doth further order and decree that the Collector direct a re-examination of said bales of bags to be made according to law, and on such re-examination to reliquidate the duties which may be lawfully due thereon.

Bill of Exceptions No. 2.

Filed December 28, 1895, as of date December 20, 1895, *nunc pro tunc.*

United States Circuit Court, Eastern District of Louisiana.

In re Ranlett & Stone	
vs.	No. 12,313.
Board of General Appraisers.	

Be it remembered that on the 21st day of January, A. D. 1895, orebef said court the motion filed on said day by plaintiffs to strike out and disregard certain evidence and certain statements in the decision of the General Board of Appraisers, all of which will more fully appear in said motion to strike made part hereof, and which said motion was taken under advisement by the court, and on which said motion this honorable court in the final decree rendered herein and signed on the 20th day of December, A. D. 1895, allowed the said motion herein of said Ranlett and Stone, as set forth and stated in said decree hereto annexed and made part hereof as if fully written and recited herein, together with the original excerpts from the Record herein of said matter so stricken by said decree also hereto made part hereof as fully as if the same had been and were fully recited herein.

Whereupon F. B. Earhart, United States Attorney, on said 20th day of December, A. D. 1895, excepted to said rulings in said decree, and reserves this his bill of exceptions and now presents the same to the court for signature.

(Signed) Charles Parlange,
U. S. Judge.

Motion to Strike Out, etc., filed January 21, 1895.

Referred to and made part of Bill of Exceptions No. 2.
Copied at page 90 of this Transcript.
Decree rendered and signed on the 20th day of December, 1895, on motion to suppress, etc., referred to and made part of Bill of Exceptions No. 2, copied at page 102 of this Transcript.

Decree—Signed.

Entered and filed December 20, 1895.

U. S. Circuit Court.

IN RE RANLETT & STONE
vs.
THE BOARD OF GENERAL APPRAISERS. } No. 12,303.

The Court allows the motion of Counsel for Ranlett & Stone to suppress the evidence taken in other cases, that is to say, the testimony of Henry Charnock and also the testimony of Charles W. Keeting on pages 5, 6, and 7 of Exhibit 2 filed in Court as part of the return of the Board of Appraisers.

The Court also allows the motion to suppress statements in the decision of the Board of Appraisers referring to matters in other cases than that of Ranlett & Stone, to-wit: the following clause:

"From one invoice of 30 bales four were ordered for examination and the twenty-six others were subsequently demanded and not delivered by the importer."

Also the following clause:

"It was admitted that there were some bags of foreign manufacture and American manufacture all indiscriminately mixed together, no attempt being made on entry or afterwards to separate from these enormous totals of goods of the same class those claimed to be relieved from duty accompanied by the proof establishing such indulgence."

Also all that part of the decision commencing with the words "In a carefully prepared paper in the nature of a brief by one of the protestants herein, etc." down to and including the following words: "and only a small proportion of the Centals thus used are of American manufacture," and it is ordered that all said testimony referred to in the said motion be suppressed as well as the statements aforesaid in said decision.

The court doth further order, adjudge and decree that the duties paid by the importers, Ranlett & Stone, on the 2,925,000 bags imported by them in the years 1893 and 1894 and referred to in the decision of the Board of General Appraisers rendered 21st May, 1894, and enumerated in the documents annexed to that decision be refunded and paid to petitioners, Ranlett & Stone, to-wit: two cents per pound on 600 bales of empty grain bags entered per "Engineer" August 14, 1893, 650 bales of same entered Sept. 7, 1893, per "Legislature," 325 bales of same per "Vesta" entered October 19, 1893, 850 bales of same entered November 8, 1893, per "Assaye," 300 bales of same entered December 6, 1893, per "Traveller" 100 bales of same entered Jan. 4, 1894, per "Pallas"

and 100 bales of same entered Jan. 15, 1894, per "Engineer" and the court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void, and the liquidation of duties heretofore made be set aside, and the money received from Ranlett & Stone as duties be refunded as aforesaid, and the Court doth further order and decree that the collector direct a re-examination of said bales of bags to be made according to law and on such re-examination to reliquidate the duties which may be lawfully due thereon.

New Orleans, December 20, 1895.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Motion and Order of Appeal and Assignment of Errors.

Filed December 28, 1895.

United States Circuit Court. Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

And now at the same term and on motion in open court of F. B. Earhart, United States Attorney for the Eastern District of Louisiana, suggesting errors in the final decree rendered herein in favor of Ranlett & Stone, plaintiffs in the above entitled and numbered cause on the eighteenth day of December A. D. 1895, and signed on the twentieth day of December A. D. 1895, as will more fully appear by the Assignment of Errors hereto attached and made part hereof and filed herewith.

That the United States is aggrieved therein. It is therefore ordered that an appeal in this cause and from the whole of said decree be and the same is hereby granted the mover, according to law, to the United States Circuit Court of Appeals for the Fifth Circuit of the United States, returnable within thirty days from date, with citation according to law, and that the same operate as supersedeas.

Allowed and signed in open court December 28, A. D. 1895.

(Signed) CHARLES PARLANGE, *Judge.*

United States Circuit Court, Eastern District of Louisiana.

IN RE RANLETT & STONE
vs.
BOARD OF GENERAL APPRAISERS. } No. 12,313.

Assignment of Errors.

And now comes F. B. Earhart, United States Attorney for the Eastern District of Louisiana, praying for an appeal herein in said cause, and assigns the following errors in the final decree rendered herein on the 18th day of December, A. D. 1895, and signed on the 20th day of December, A. D. 1895.

FIRST.

That the court erred in not rescinding the order of this Honorable Court of June 1st, 1894, to the General Board of Appraisers to make return of the matter involved herein as more fully stated in said motion to rescind, and filed July 2d, 1895, and that there is error in said order overruling said motion to rescind, said order being dated, entered and filed July 3d, 1894. Bill of exceptions No. 1.

SECOND.

That the court erred in allowing in its decree of December 20th, 1895, the motion of Ranlett & Stone to strike out on their motion filed January 21st, 1895, all the matter stated in said decree and which is more fully recited in the Bill of Exceptions No. 2, and made part hereof, together with the excerpts of the matter so striken from the record herein filed; said excerpts made part hereof for greater certainty as if the same were fully recited herein.

THIRD.

That the court erred in its decree in which it is adjudged that the "duties by the importers, Ranlett & Stone, on the two million nine hundred and twenty-five thousand bags imported by them in the years 1893 and 1894 and referred to in the decision of the Board of General Appraisers rendered 21st May, 1894, and enumerated in the documents annexed to that decision, be refunded and paid to petitioners, Ranlett & Stone, to-wit: two cents per pound on 600 bales of empty grain bags entered per 'Engineer' August 14th, 1893, 650 bales of same entered Sept. 7th, 1893, per 'Legislator,' 325 bales of same per 'Vesta' entered October 19th, 1893, 850 bales of same entered November 8th, 1893, per 'Assaye,' 300 bales of same entered December 6th, 1893, per 'Traveller,' 100 bales of same entered Jany. 4th, 1894, per 'Pallas' and 100 bales of same entered Jany. 15th, 1804, per 'Engineer.'"

FOURTH.

That the court erred in its decree by which it is adjudged, to-wit: "The court doth declare that the examination heretofore made of said bales of bags is void and not in conformity to law or the regulations of the Treasury Department, and any liquidation of duties based on said examination is illegal and void and the liquidation of duties heretofore made be set aside and the money received from Ranlett & Stone as duties to be refunded as aforesaid."

FIFTH.

The court erred in its decree in which it is adjudged that the examination of the said bales and bags were not made in accordance with law.

And for these and other errors apparent on the face of the record the appellants pray that the decree appealed from be reversed and for all costs and general relief.

(Signed) F. B. EARHART,
United States Attorney.

In open court, December, 1895.

The United States of America, Fifth Judicial Circuit.

The President of the United States. To Albert S. Ranlett and Joseph W. Stone, of the City of New Orleans, State of Louisiana, composing the members of the firm of Ranlett and Stone, of the said city of New Orleans, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Fifth Circuit at New Orleans, La., within thirty days from the date hereof, pursuant to a motion and order of appeal sued out and filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Louisiana in the cause wherein and in which Ranlett & Stone are plaintiffs and petitioners for review of the decision of the General Board of Appraisers of the United States vs. Said General Board of Appraisers, No. 12,313 of the docket of the said Circuit Court of the United States to show cause, if any there be, why the said judgment rendered against the said General Board of Appraisers and the United States of America, as in said motion of appeal and the order thereon mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles Parlange, judge of said Circuit Court of the United States, for the Eastern District of Louisiana, this 28th day of December in the year of our Lord one thousand eight hundred and ninety-five.

(SEAL)

CHARLES PARLANGE, *Judge.*

(Endorsed:) No. 12,313. In re Ranlett & Stone vs. General Board of Appraisers, etc. Citation No. , U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed December 30, 1895. E. R. Hunt, Clerk.

Marshal's Return.

Received by U. S. Marshal, New Orleans, La., December 28, 1895.

On this 30th day of December, 1895, before the undersigned authority, personally came and appeared John B. Rivarde, deputy U. S. marshal for the Eastern District of Louisiana, who being duly sworn deposes and says that he served copy hereof on Albert S. Ranlett and Joseph W. Stone, by handing same to Albert S. Ranlett, in person, in the city of New Orleans, La., on the 28th day of December, 1895.

JOHN B. RIVARDE.

Sworn to and subscribed before me on this 30th day of December, 1895.

E. R. HUNT, *Clerk.*

United States of America, Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

Clerk's office:

I, Edward R. Hunt, Clerk of the Circuit Court of the United States, for the Fifth Circuit and Eastern District of Louisiana, do hereby certify,

that the foregoing 107 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together withall the evidence adduced on the trial of the case of in the matter of Ranlett & Stone vs. The Board of United States General Appraisers, No. 12,313 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31 day of January, A. D. 1896.

(SEAL) E. R. HUNT, *Clerk.*

I, Charles Parlange, United States Judge for the Eastern District of Louisiana, do certify, that Edward R. Hunt, whose name is signed to the above certificate as Clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court: That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 31 day of January, A. D. 1896.

CHARLES PARLANGE, *Judge.*

60 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, greeting:

Being informed that there is now pending before you a suit in which The United States is appellant and Ranlett & Stone are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the eastern district of Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court
61 of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

62 (Indorsed:) Supreme Court of the United States, No. 218, October term, 1897. The United States vs. Ranlett & Stone. Writ of certiorari.

63 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES, APPELLANT,
vs.
RANLETT & STONE.
} No. 218.

STIPULATION.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the printed copy of the record of said cause in the circuit court of appeals for the fifth circuit transmitted by the clerk with the certification of questions by said court to the Supreme Court of the United States, and now on file in the office of the clerk of the Supreme Court, may be taken as the return of the clerk of said circuit court of appeals to the writ of certiorari issued therein.

J. K. RICHARDS,
Solicitor-General.
WM. A. MAURY,
Counsel for Respondents.

I hereby certify that the foregoing is a true and perfect copy of the stipulation filed in the above-mentioned cause this June 13, 1898.

[SEAL.] J. M. MCKEE,
Clerk U. S. Circuit Court for the Fifth Circuit.

64 *To the honorable the Supreme Court of the United States:*

The record and all the proceedings in the case whereof mention is within made having been lately certified and filed in the office of the clerk of the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and, under the direction of counsel for the appellant, said stipulation is certified as a return to the writ of certiorari issued therein.

New Orleans, La., June , 1898.

[SEAL.] J. M. McKEE,
Clerk of the U. S. Circuit Court of Appeals for the Fifth Circuit.

65 (Indorsed:) Case No., 16363. Supreme Court U. S. October term, 1897. Term No., 20. The United States, appellant, vs. Ranlett & Stone. Writ of certiorari and return. Office Supreme Court U. S. Filed Jun' 17, 1898. James H. McKenney, clerk.